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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 63

GROVE PRESS, INC., HOWARD WAGONHEIM & 5 WEST AMUSEMENT CO., INC., *Appellants*

v.

MARYLAND STATE BOARD OF CENSORS, *Appellee*

On Appeal From the Court of Appeals of Maryland

BRIEF OF APPELLANTS

OPINION BELOW

The opinions of the Court of Appeals of Maryland (App. 6-42) are reported at 258 A.2d 240.

JURISDICTION

The opinions of the Court of Appeals of Maryland were entered on October 22, 1969. Notice of Appeal to this Court was filed on November 5, 1969. The Jurisdictional Statement was filed on December 3, 1969. Probable jurisdiction was noted on March 23, 1970. The jurisdiction of this Court rests upon 28 U.S.C. §1257(2).

QUESTIONS PRESENTED

1. Whether Maryland's motion picture censorship statute (Md. Code Ann., Art. 66A) has been applied in this case to prevent the exhibition of a film ("I Am Curious (Yellow)") which is protected from interference under the First and Fourteenth Amendments' guarantees of freedom of expression.

2. Whether the system of prior restraint imposed on the exhibition of motion pictures by the Maryland censorship statute, on its face or as applied, exceeds constitutional limits.

3. Whether the First and Fourteenth Amendments prohibit multiple State and local obscenity proceedings against a work adjudged by a federal court as a matter of constitutional law to be non-obscene and constitutionally protected in an action binding on the United States.

4. Whether application of the Maryland censorship statute to the exhibition of a film in a privately owned theatre for the benefit of adults who pay admission and voluntarily choose to view the film violates the First and Fourteenth Amendments under the constitutional principles applied in *Stanley* v. *Georgia*, 394 U.S. 557 (1969).

5. Whether the procedures followed in this case by the Maryland State Board of Censors and by the courts below failed to meet constitutional standards.

STATUTE INVOLVED

The Maryland motion picture statute, Md. Code Ann., Art. 66A (1964 ed. and 1969 Supp.), is set out in full in Appendix J of the Jurisdictional Statement at pp. 91a-102a.

STATEMENT

The motion picture "I Am Curious (Yellow)" was imported from Sweden on December 30, 1967, for distribution and exhibition throughout the United States. Shortly after arrival at Kennedy International Airport in New York, it was seized by officials of the United States Bureau of Customs and forfeiture proceedings were instituted by the federal government in the United States District Court for the Southern District of New York. The action was defended by appellant Grove Press, Inc. (hereinafter "Grove"), the importer and owner of the United States distribution rights in the film. After a jury trial, the District Court entered a judgment finding the film obscene, but upon appeal to the United States Court of Appeals for the Second Circuit, this judgment was reversed, and on November 28, 1968, eleven months after importation, a final order was entered, requiring the release of the film for distribution. *United States* v. *A Motion Picture Entitled "I Am Curious (Yellow)"*, 404 F.2d 196 (2d Cir. 1968), reprinted in Jurisdictional Statement as Appendix D, pp. 47a-62a.

On February 19, 1969, prior to exhibition of the film in any theatre in the United States, Grove entered into a contract with appellant 5 West Amusement Co., Inc. (hereinafter "West"), an owner of motion picture theatres in Baltimore, Maryland, for the exhibition of the film at the 7 East Theatre in Baltimore (J.A. 502-503).[1] Pursuant to national distribution policy which Grove had adopted, and which it had represented to

[1] "J.A." stands for the printed Joint Appendix filed in the court below and with the Clerk of this Court. "App." stands for the printed appendix required by Rule 36 of this Court containing, *inter alia*, the opinions of the court below.

the United States Court of Appeals, the agreement provided that admission would be limited to persons 18 years and older (J.A. 503). The same representation was made to the Circuit Court for Baltimore City in this case (J.A. 503-504).

The film was distributed nationally, and it first opened in New York City on March 10, 1969. As of July 1, 1969, the evidence showed, it had been exhibited to more than 870,000 people in the cities of New York, Philadelphia, Washington, San Francisco, Los Angeles, Houston, Atlantic City, San Antonio, Miami Beach, Seattle, Norfolk, Boston and Portland.[2]

On July 1, 1969, Grove and West, reserving the right to challenge the constitutionality of the statutory requirements of prior submission,[3] made application to the Maryland State Board of Censors for a license for the exhibition of the film in Maryland. On July 8, 1969, the Board made an administrative determination that the film was obscene, disapproving the film and declining to issue the license (J.A. 10). With this determination as its jurisdictional requisite, the Board on July 11, 1969, petitioned the Circuit Court of Baltimore City, pursuant to Md. Code Ann., Art. 66A, §19, for a judicial determination of the film's obscenity.

The petition was served upon appellants on Saturday, July 12, and on Tuesday, July 15, they filed

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[2] The film is currently being shown, or has already been shown, in the cities listed in Appendix C, pp. 11a-13a, *infra*. Current figures indicate that as of July 15, 1970, the film has been exhibited to more than five-and-a-half million people in the United States.

[3] Of the four States which were noted in *Freedman* v. *Maryland*, 380 U.S. 51, 59 n.5 (1965), as having motion picture censorship statutes, only Maryland still enforces a censorship law applicable to adults. See App. E at pp. 24a-25a, *infra*.

a motion raising preliminary objection. The substance of the motion was that prior judicial determination by the United States Circuit Court of Appeals for the Second Circuit operated to preclude further censorship proceedings based on the alleged obscenity of the film (J.A. 11). On that same date appellants filed interrogatories requesting the Board to "[s]tate the names and addresses of all experts who were consulted by the Maryland State Board of Censors in connection with its review of the application for a license for the showing of a film," and to "[i]dentify which, if any, of the persons named in the answer to the preceding interrogatory advised the Board that the dominant theme of the film taken as a whole is not an appeal to prurient interest in sex or that the film is not utterly without redeeming social value" (J.A. 14-15).

The hearing began on July 16, 1969. In response to the request for interrogatories, counsel for the Board declared, "I am not prepared to state one way or the other whether there were experts who saw the film who advised the board as [appellants' counsel] suggested they might have been advised." (J.A. 26). He also argued that the Board does "not conduct normal administrative proceedings," and that "we don't believe that it is up to us to give any aid and comfort to the defendant in this case to try to help him prove what he would like to prove, which I don't believe he is going to be able to prove, and we resist the motion" (J.A. 27). The trial judge initially reserved ruling on the requested interrogatories, and subsequently denied the request (J.A. 243). *Inter alia*, the court also denied the motion based upon the decision of the Court of Appeals for the Second Circuit on the ground that the courts of Maryland are not

bound by a decision of a federal court of appeals and "there is no difference between the first and any other amendment in that respect" (J.A. 29-30).

The court then viewed the film[4] and heard the testimony of four witnesses for the State (J.A. 31-242).[5] Eight witnesses, including several heads of departments at institutions of higher learning, testified for the appellants.[6] The appellants also introduced reviews of the film from national magazines and newspapers of wide circulation (J.A. 244-553; J.A. 319, 553).[7]

On July 31, 1969, the Circuit Court for Baltimore City, after viewing the film a second time, entered a Memorandum Opinion and Order disapproving the film for licensing under the statute (J.A. 1-11). The Court noted that it "was impressed by the testimony of one witness, at least as I interpreted it, who testified that, in his opinion, this is a serious film strongly put together, confusing to some, but that it would not hold together without the sex scenes" (J.A. 8). The court then rejected the testimony of appellants' expert witnesses "and their explanations of the reasons for the various objectionable scenes" (J.A. 9) and found that the film was obscene under the three-pronged test of *Memoirs* v. *Attorney General*, 383 U.S. 413 (1966).

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[4] A brief description of the film which was submitted to the Court of Appeals of Maryland as an appendix to appellants' brief appears in the Jurisdictional Statement as Appendix F, pp. 66a-69a.

[5] The testimony of the States' witnesses is summarized in the Jurisdictional Statement, Appendix G, pp. 70a-79a.

[6] The testimony of the defense witnesses is summarized in the Jurisdictional Statement, Appendix H, pp. 80a-89a.

[7] Copies of the reviews are bound into the rear of the second volume of the Joint Appendix.

On appeal, the Court of Appeals of Maryland affirmed by a division of 4-to-3. The majority opinion, apparently giving weight to "the visual impact of a motion picture as contrasted with the printed word," concluded that "the overriding theme is sex per se" and "that the dominant theme of the film taken as a whole, appeals to a prurient interest in sex and is patently offensive in that it affronts contemporary community standards relating to the description or representation of sexual matters." The majority concluded that the film was "utterly without redeeming social value" because "the attempts of the film makers to use social questions to depict the restlessness of youth and its search for identity, against an intellectual ambience," was "patently strained and contrived." The majority also rejected the contention that the decision of the Court of Appeals for the Second Circuit foreclosed obscenity proceedings by the State on the ground that "only an adjudication by the United States Supreme Court would be binding upon this Court with regard to the film before us."

Chief Judge Hammond and Judges McWilliams and Singley dissented in an opinion by Judge McWilliams which summarized the expert testimony offered in support of appellants' position as "an impressive array of witnesses . . . [including some] who . . . are considered to be the foremost authorities in this State on the motion picture, . . ." The dissenters concluded that their views, and the views of serious movie reviews "reflect at least 'a modicum of social value,'" and they agreed with the opinions of Judges Hays and Friendly of the Court of Appeals for the Second Circuit that the film's social and sexual themes are interrelated.

SUMMARY OF ARGUMENT

1. The film "I Am Curious (Yellow)" cannot be found obscene in the constitutional sense under any of the tests developed in this Court's opinions on the subject of obscenity. It is plain, we submit from an examination of the film itself, that its dominant theme is not an appeal to the prurient interest and that it contains substantial material of "redeeming social value"—both in the artistic and social sense. The view of experts who testified during the trial and of reviewers and critics whose opinions have been published in national magazines and newspapers more than amply support the conclusion that the film is a leading artistic effort, pathbreaking in its attitude towards candor on the screen, but definitely not obscene or pornographic. The history and policy of the First Amendment's Free Speech and Press Clause, as well as the decisions of this Court, require that the same test for obscenity be applied for motion pictures as for books. The decision of the Court of Appeals for the Second Circuit that the film qualifies as free expression under the First Amendment should be approved by this Court.

2. The Maryland film licensing statute under which the film was banned is unconstitutional in several respects. *First*, it reaches conduct which is plainly protected under the First Amendment because it prevents use and exhibition of films *in vacuo*, without any consideration of the surrounding circumstances, contrary to the principles established by this Court's recent decisions. *Second*, the obscenity standard, as defined in the statute, is plainly overbroad—thereby permitting the Board of Censors to suppress films which are within the range of constitutional protec-

tion. *Third*, the statute permits long delays before a final judicial decision is made regarding the obscenity of a film, in violation of the rule laid down by this Court's cases involving such licensing schemes. The Boards procedures do not meet minimal constitutional standards.

3. The First Amendment also prevents Maryland from suppressing "I Am Curious (Yellow)" because the non-obscenity of the film was conclusively determined in the United States Court of Appeals for the Second Circuit in an action binding upon the federal government. National distribution of films and books in this country would be seriously hindered if each State and local jurisdiction could compel the publisher or distributor and local booksellers or exhibitors to litigate the alleged obscenity of a book or film. Although the State was not a party in the federal action, it could have participated as *amicus* or as a party. In order to secure the First Amendment right to the distribution of non-obscene matter, this Court should hold, in this case, that a decision of the kind reached by the Court of Appeals for the Second Circuit forecloses action by State and local agencies based upon alleged obscenity of the film.

4. This Court's recent decision in *Stanley* v. *Georgia*, 394 U.S. 557 (1969), supports the principle that the possession and use of even admittedly obscene material is constitutionally protected by the First Amendment if it does not intrude on private sensibilities, if it is not sold in "pandering" fashion, and if it is not made available to juveniles. The Court recognized in *Stanley* a First Amendment right secured to any adult "to read or observe what he pleases." 394 U.S. at 565, 568. The

effect of the decision below is to infringe upon these rights by preventing willing adults, who have full knowledge what they may see on the screen, from gathering together in an exhibitor's private theater to view "I Am Curious (Yellow)." If a single individual who is wealthy enough to purchase a print of the film may see it in his library or basement, that right should not be denied to others who cannot afford to pay what a print costs.

5. Finally, we argue that the appellees and the trial court erred in refusing to engage in full disclosure of the names of experts who had seen the film at the request of the Board of Censors. A State is not constitutionally entitled to suppress favorable leads in a criminal case, and the same rule must apply where First Amendment rights are at stake.

ARGUMENT

I

THE EXHIBITION OF "I AM CURIOUS (YELLOW)" IS PROTECTED BY THE FIRST AND FOURTEENTH AMENDMENTS FROM GOVERNMENTAL SUPPRESSION BECAUSE THE FILM CANNOT BE DEEMED "OBSCENE IN THE CONSTITUTIONAL SENSE"

This case concerns an attempt by the governmental authorities of the State of Maryland to prevent the public exhibition of a serious and important Swedish motion picture which has already been seen by an estimated five and a half million adult Americans in 33 States,* has been the subject of reviews and articles in

* A list of the cities where the film has been commercially shown appears as Appendix C, pp. 11a-13a, infra. The total estimated audience has been computed by dividing the average admission charge ($2.50) into the film's total gross receipts to July 15, 1970. On this basis, the estimated total is 5,678,440.

more than 100 newspapers and magazines in the United States,[9] and was selected by *The New York Times* film critic as one of "The Twenty Best Films of 1969."[10] In reviews introduced below, the film was characterized as: "the world's first honest" motion picture,[11] a "sociological assault on Swedish socialism, Swedish mores and Swedish morals";[12] "(an) earnest portrait of questioning, questing youth confronting the smug liberalism of an enlightened middle-class society;"[13] and "a good, serious movie about a society in transition."[14] Other commentators suggested it was a "genuinely vile and disgusting Swedish meatball,"[15] and "almost unbearably dull."[16]

[9] These are listed in Appendix B, pp. 6a-10a, *infra*.

[10] *New York Times*, December 28, 1969, Sec. D, pp. 1, 13 and 26.

[11] *Holiday*, December, 1968 (Def. Ex. 11e).

[12] *The Philadelphia Bulletin*, April 24, 1969 (Def. Ex. 11k).

[13] *Life*, March 21, 1969 (Def. Ex. 11A).

[14] *The New York Times*, March 11, 1969 (Def. Ex. 11K). The existence of such commentary can be considered proof enough that a film or book is entitled to constitutional protection. *Attorney General* v. *A Book Named "Naked Lunch"*, 218 N.E. 2d 571 (1966); *Jacobellis* v. *Ohio*, 378 U.S. 184 (1964); *Grove* v. *Gerstein*, 378 U.S. 577 (1964).

[15] *The New York Times*, March 23, 1969 (State Ex. 5).

[16] *The News* (Washington, D.C.), April 1, 1969. Such evidence is probative not of the truth of the matters contained therein, but of the existence of a *public interest*. It should not matter as a constitutional free speech question, whether one or one thousand critics or laymen consider a book or a film important. See Mill, *On Liberty*: "If all mankind minus one were of one opinion, and only one person were of contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind."

The majority of the Court below acknowledged that experts had characterized the film "as a quest for identity with reality, on the part of a young heroine, amidst the shifting sands of social, moral, political, economic, and cultural transition . . . [and] as representative of the younger generation in Sweden, their hope for a classless society, their adherence to non-violence, and their demonstrable hostility against the Franco-type totalitarian state" (App. 9).[17]

The majority concluded, however, the film should be suppressed as obscene, not withstanding its serious nature and content because it "vividly depicts six different acts of sexual intercourse in various positions and locales." (App. 10). These selected scenes, which "take only about 10 minutes out of 120,"[18] constitute the only asserted justification for suppression of the film. The majority's judgment, as we shall show, involved a gross misapplication of the federal

[17] Stanley Kauffmann, one of the nation's leading authorities and critics of motion pictures, described the content of the film briefly as follows in *The New Republic* of March 15, 1969:

> The story is about a young Stockholm girl whose working-class father is a defeated libertarian. (He fought briefly in Spain against Franco.) With some education, she is emerging out of class constriction into an atmosphere of question: questioning everything—social and political and religious acceptances, military tradition, the Bomb, and—inevitably—sexual conventions. As a parallel to her curiosity, Sjoman [the director] has used an inquisitive method in his directing: moving continually between a documentary style, straight fictional narrative, and even into the making of the fiction. (We often see the crew and the director.) The patent purpose is to show that he is questioning the acceptances of his own world as his central character is questioning hers.

[18] Dissenting opinion of Chief Judge Lumbard in *United States v. A Motion Picture Film Entitled "I Am Curious (Yellow)"*, 404 F.2d 196, 203 (2d Cir. 1968).

constitutional tests established by this Court, to govern determinations of obscenity, with respect to books and films.

The film "I Am Curious (Yellow)" cannot be considered obscene under any of the constitutional tests contained in the opinions of this Court and its members since, and including *Roth* v. *United States*, 354 U.S. 476. At the outset of our analysis, we wish to note what should be obvious from the most cursory examination of the film: "I Am Curious (Yellow)" is of a totally distinct *genre* from the material which this Court must pass upon in run-of-the-mill obscenity cases. It differs, *toto caelo*, from the "peepshow" and "striptease" films which were before this Court in a series of cases summarily reversed in 1967 and 1968 following the decision in *Redrup* v. *New York*, 386 U.S. 767 (1967).[19] And little political sensitivity or artistic expertise is needed to recognize that its purposes and achievements are more serious and significant than those of the motion picture ruled non-obscene by this Court in *Cain* v. *Kentucky*, No. 347, O.T. 1969, decided March 23, 1970.

A. The Dominant Theme of the Film Taken as a Whole Does Not Appeal to Prurient Interest. Neither is the Film so Offensive on its Face as to Affront Current Community Standards of Decency.

In *Roth* v. *United States*, 354 U.S. 476, 489 (1957), this Court announced the germinal constitutional test for obscenity—"whether to the average person, apply-

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[19] *E.g.*, *Ratner* v. *California*, 388 U.S. 442 (1967) ("Honey Bee"); *Cobert* v. *New York*, 388 U.S. 433 (1967) ("Jayne Palmer No. 2", "Jayne Tracy"); *Schackman* v. *California*, 388 U.S. 454 (1967) (assorted "peepshow" films); *I. M. Amusement Corp.* v. *Ohio*, 389 U.S. 573 (1968) ("Beautease Models").

ing contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." In discussing this test, the Court made several observations regarding the kind of material which it intended to exclude from the scope of that definition. *First*, the Court unequivocally rejected the bygone standard of *Regina* v. *Hicklin*, [1868] L.R. 3 Q.B. 360, that material might be classified as obscene on account of "the effect of isolated passages upon the most susceptible persons." 354 U.S. at 488-489. The Court held that the material must be judged "as a whole" and that its effect on "the average person, applying contemporary community standards" was the proper guide.

Second, the Court noted (354 U.S. at 487) that "sex and obscenity are not synonymous," and that "[t]he portrayal of sex . . . is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press."[20]

Third, the Court cautioned that the First Amendment protects "ideas having even the slightest redeeming social importance" and defined the term "obscenity" as impliedly encompassing only such material as is "utterly without redeeming social importance." 354 U.S. at 484. The Court warned that "material which does not treat sex in a manner appealing to prurient interest" was to be afforded the full scope of First Amendment protection. *Id.* at 488.

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[20] This proposition was amplified in Mr. Justice Brennan's opinion announcing the judgment of the Court in *Jacobellis* v. *Ohio*, 378 U.S. 184, 191 (1964): "It follows that material dealing with sex in a manner that advocates ideas . . . or that has literary or scientific or artistic value or any other form of social importance, may not be branded as obscenity and denied the constitutional protection."

The film at issue here falls squarely within the protected area defined in the *Roth* opinion. It is plain from even the most fleeting analysis of "I Am Curious (Yellow)" that it depicts the turbulent life of a 22-year-old Swedish drama student and the development of her political, moral and social attitudes. Included in the characterization of the film's protagonist is a love affair she has with a young man. Her lover's insincerity and deception arouse in her emotions which conflict sharply with her evolving political views regarding nonviolence and pacifism. The film comes to grips with this conflict and traces its effect on the central character's home life, her attitude towards her father and her own maturation.

"I Am Curious (Yellow)" contains several scenes depicting that "great and mysterious motive force in human life" (354 U.S. at 487) with greater honesty and directness than it is treated in the feature films ordinarily seen in commercial motion picture theatres. But those scenes—which make up less than ten percent of the film's footage—cannot justify suppression of the film, particularly in light of all three *caveats* expressed in *Roth*:

First, to suppress the film on account of the explicit scenes would be tantamount to ignoring the remaining 110 minutes—in violation of the rule that the film must be judged "as a whole." There is much more to "I Am Curious (Yellow)" than the sexual encounters between the central character, Lena Nyman, and the young man, Borje. There is, as well, great emphasis on Lena's developing political views, on her search for values in life, and on her relationship with her father, and to her hero-images, including the Russian poet Yevtushenko and Martin Luther King. The film *in*

its entirety cannot be said to have, as its dominant theme, either the subject of sex in general or an appeal to the prurient interest. To be sure, sex plays a role in Lena's life, as it does in the life of any healthy 22-year-old girl. But in according less than ten percent of the film's footage to Lena's sexual life, the motion picture probably makes sex less a "dominant theme" than it is in real life. Anyone vaguely familiar with today's "restless youth" knows that no fair portrayal of that generation can ignore sex. And the film treats the subject in an honest and unexaggerated manner; it does not manifest any "itching," "morbid," "lascivious" or "shameful" characteristics of the kind which typify material catering to prurient interests.[21] Com-

[21] Nationally recognized critics also pointed out the honest and non-prurient portrayals of sexual relations which distinguished this Swedish film. Thus, Vincent Canby observed "This scene and others in which Lena and Borje effect sexual congress . . . are explicit, honest, and so unaffectedly frank as to be nonpornographic. . . . By acknowledging the existence of genitalia and their function in the act of love, the movie salvages the depiction of physical love from the scrap heap of exploitation, camp and stag films." (*N.Y. Times*, March 11, 1969; Def. Ex. 11). Richard Schickel said. "This movie does, in fact, go further than any previous theatrical film in showing male and female genitals nude and functionally employed . . . But we have, in every area of thought and art, being brought so teasingly close to this level of explicitness that it is a relief to arrive there finally and be done with it. Indeed, I should say that the sight of Lena Nyman, his leading lady, naked, is one of the best earnests of (the director's) seriousness. A panderer would have picked a prettier creature." (*Life*, March 21, 1969; Def. Ex. 11). Hollis Alpert noted, "certainly, the girl and boy of the film do make love frequently, and in a variety of positions and circumstances. They *are* seen in the nude, but not suggestively." (*Saturday Review*, March 15, 1969). Leonard Gross said "The sexual scenes do not arouse at all." (*Look*, April 29, 1969). William Wolf saw that the director "does not work at arousing an audience; he's too preoccupied with naturalism. Nor has he chosen an especially alluring couple." (*Cue*, March 15, 1969).

pare *Roth* v. *United States*, 354 U.S. at 487, n. 20 (1957).

Second, the absence of exaggeration and the de-emphasis of morbid or erotically arousing material plainly puts the challenged film footage in the realm of "portrayal of sex," not in the area of "obscenity." Even the majority below grudgingly admitted "there are times when the love scenes are introduced with some grace . . ." (App. 15). This aspect alone of the film would be sufficient to qualify these scenes—even if they stood alone (which, of course, they do not)—as "material dealing with sex . . . that has literary or scientific or artistic value . . ." *Jacobellis* v. *Ohio*, 378, U.S. 184, 191 (1964); see note 20, *supra*.

Third, in light of the strong warning in *Roth* against overextension of the permissible limit of government regulation of obscenity, a heavy burden falls upon the State to establish that this film "treat[s] sex in a manner appealing to prurient interest." 354 U.S. at 488. The most that can be said about "I Am Curious (Yellow)" is that in certain select scenes it treats sex more openly that has heretofore been the custom; such a conclusion is far removed from a finding that the treatment of sex in less than ten percent of the film transforms the film into one designed to appeal to prurient interests. Moreover, while the director's frank portrayal of the sexual relations between Lena and Borje may appear "unorthodox," "controversial" or even, in the minds of some, "hateful to the prevailing climate of opinion" (354 U.S. at 484), this insistence on candor can hardly be equated with "prurience"—*i.e.*, with itching, longing, morbidity or lasciviousness. Rather, it is a path-breaking approach to the treatment of sex in films—as much as D. H. Lawrence's

Lady Chatterley's Lover involved a departure from the typical treatment in novels of sexual relations. See *Grove Press, Inc. v. Christenberry*, 276 F.2d 433 (2d Cir. 1960).

We point out that such admitted departures from the conventional paths taken in most books or films with regard to descriptions and representations of sexual relations is *in no way* tantamount to confessing that the works involved are "patently offensive" to contemporary community standards of decency, in the sense determined to be essential to obscenity findings, by the Court in *Manual Enterprises v. Day*, 370 U.S. 478 (1962). There, in an opinion by Mr. Justice Harlan, followed since in the Court's plurality opinions in *Jacobellis v. Ohio*, 378 U.S. 184 (1964), and *Memoirs v. Attorney General*, 383 U.S. 413 (1966), the Court held that material could not constitutionally be held obscene unless it also contained "an element which, no less than 'prurient interest,' is essential. . . ."—this was "patent offensiveness," a "self-demonstrating" indecency of a sort approaching, if not equivalent to "hard-core pornography." Since even "acknowledged masterpieces" might "not beyond reason be claimed to appeal to the 'prurient interest' of the reader or observer," in their "dominant theme," the Court held "it necessary the material be found also to be beyond the pale of contemporary notions of rudimentary decency." It is clear, we submit, that "I Am Curious (Yellow)" is not patently offensive to contemporary standards of decency, is not a film of self-demonstrating indecency, and is in no way pornographic. While the fact that this Swedish film has already been seen by more than five-and-a-half million Americans may have some bearing on its pace-making qualities in

the area of sexual representation, that fact on its face must disprove the contention that the film is beyond the pale of contemporary community standards of decency.[22]

B. The Film Possesses Substantial Material of Redeeming Social Value.

"I Am Curious (Yellow)" cannot by any reasonable stretch of the judicial imagination, be viewed as "utterly without redeeming social importance" within the meaning of *Roth's* demarcation of the line between obscenity and constitutionally protected material, much less as "unqualified worthless" under the rule applied in *Memoirs v. Attorney General*, 383 U.S. 413 (1966), or "utterly without social importance," under *Jacobellis, supra.* In the *Memoirs* decision, this Court determined that a classic "erotic novel," which was described by a Justice of this Court as "nothing more than a series of minutely and vividly described sexual

[22] It is important to note that the majority below did not reach its conclusion, or attempt to justify its judgment and its deviation from the Second Circuit judgment on the basis that the constitutional freedom of the film was required to be evaluated in terms alone of Maryland community standards of decency, as distinguished from standards elsewhere in the nation. Opinion and testimonial evidence was received at the trial, and noted by the appellate court, from both national and Baltimore areas. Thus, this case presents no legal question relating to a right of the state of Maryland to prohibit the circulation within its borders of material which "goes substantially beyond (Maryland's) customary limits of candor" or "affronts" Maryland's "current community standards of decency," as distinguished from the possibly more generous limits and standards of sister States or of the rest of the nation—assuming this matter was not settled by the plurality opinion in *Jacobellis v. Ohio.* However, it it submitted that the reasoning of *Jacobellis v. Ohio* is unassailable, if the disparate exercise of state police powers in the obscenity field is not to make a crazy quilt of First Amendment freedoms. Surely, where free expression rights are at stake, the outer limits of the police power of the several states must be uniform. See also pp. 36-39, *infra.*

episodes" (383 U.S. at 415), was entitled to constitutional protection because of the "modicum of social value" arising out of its "literary merit, . . . skill in characterization and . . . gift for comedy" and the part it played "in the history of the development of the English novel" (383 U.S. at 419). The film in issue here far exceeds the book involved in *Memoirs* in social value, both because, as was true of "Memoirs," the sexual episodes are presented with artistic skill and a "gift for comedy," and because, unlike "Memoirs," there is much more to the film than its sexual episodes.

(1) *The film's artistry.* The testimony of experts at this trial established that the film in general, as well as the sexual sequences, were replete with artistic innovation and skill. And the testimony is confirmed by the published critical opinion,[23] most of which is favorable to the film. With respect to the sexual scenes, for example, the Acting Director of the Humanities Center at Johns Hopkins University, Dr. Richard A. Macksey, testified that the producer of "I Am Curious (Yellow)" introduced "a different kind of artistic solution." (J.A. 256, 257):

> He keeps interrupting sexual scenes, you remember, by getting frames, story and the television, the film makers outside, the reminders. I think these are all distancing effects. I would argue they tend

[23] See, *e.g.*, the reviews appearing in *New York Times*, March 11, 1969; *Saturday Review*, March 15, 1969; *Cue*, March 15, 1969; *Look*, April 29, 1969; *The Washington Post*, March 11, 1969; *Boston Herald Traveler*, May 29, 1969. Again, we wish to note that the requisite redeeming social value is shown not by the existence of favorable reviews, but by the existence of public commentary or support. See notes 7 and 8.

> to operate against pornographic or prurient response simply because he keeps reminding you this is a film and it is being made as a film and these interruptions occur . . . almost predictably when there is a sexual sequence.

With regard to one of the sexual episodes, Dr. Macksey testified (J.A. 259-260):

> The editing, I thought, was quite brilliant . . . This particular one is very brief. He chooses to make the focus of it not the scene itself, but the fact of the guardsman in front of the palace, his adam's apple and so on. Then the quick transition is to fantasy, with the link being the use of the Swedish anthem in this peculiar rock time.

Speaking of the "interior scenes at Rumskulla"—again involving sexual episodes—Dr. Macksey testified (J.A. 260):

> I think cinematically there are a few effects in lighting which I think are quite new. One was developed by the photographer . . . [H]e devised a way of using morning light by blocking the window. He makes a kind of diagram with various pictures he puts against the window to control the light.

When asked in cross-examination about another sexual episode, Dr. Macksey replied (J.A. 278, 279):

> He [Sjoman] did very much want to show the faces. He talks about this in the diary. This is one reason it ranges [*sic*] the bodies as he does. It allows them to avoid some of what he seems to suggest are the leering qualities of the normal

> shooting of sexual scenes, as I say . . . She is absolutely outraged at the time . . .

Dr. Macksey also testified, both on direct and cross-examination, that the sexual episodes were filmed with humor (J.A. 264, 290, 294, 321-322), and that the particular conduct engaged in by the characters during the sexual episodes was based upon "a valid artistic judgment" by the producer with respect to the "character motivation" (J.A. 322-323).

Other experts also testified about the film's artistic merit. The Chairman of the Department of Fine Arts at Goucher College, Dr. Lincoln F. Johnson, who has regularly been teaching courses in the art of the motion picture and has served on juries for the American Film Festival and Maryland Film Festival, testified that "I Am Curious (Yellow)" was substantially more artistic in its presentation of sex than other named films he had seen in Maryland (after they were approved by the Maryland State Board of Censors). Dr. Johnson concluded (J.A. 338):

> Now, quite frankly, I find it very, very difficult —I am going to say this—to comprehend how the Censor Board can pass a vulgar, meretricious exploitation movie like this [a film called, "Sappho, Darling"] and cause trouble with a serious film by a serious film artist on serious social themes like "I Am Curious (Yellow)."

Dr. Roland H. Paulson, Chairman of the English Department at Johns Hopkins University, testified that the film has "artistic, esthetic merit" (J.A. 440), and the Director of the Fine Arts Program at the University of Maryland, Dr. Irving Brown, concluded

under oath that the film has artistic merit because it "is a good try at some interesting forms, using a number of different frameworks and a number of things at the same time" (J.A. 491).

Testimony of substantially the same effect as that presented in the trial below was presented in the course of six other trials relating to the alleged obscenity of "I Am Curious (Yellow)",[24] the trial in the United States District Court for the Southern District of New York following the Bureau of Customs seizure,[25] and a trial in the Superior Court of of New Jersey, Chancery Division, Essex County, which resulted in a finding that the film was constitutionally protected against suppression.[26]

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[24] *Grove Press, Inc.* v. *Melvin Bailey*, et al, Civ. Action 69-770, (U.S. District Court for Northern Dist. of Alabama); *Grove Press, Inc., et al* v. *Anthony B. Flask, et al*, No. C69-735, (U.S. Dist. Ct., Northern Dist. of Ohio); *Kansas* v. *A Motion Picture Entitled "I Am Curious Yellow"*, No. 6122, (Dist. Court of Johnson City, Kansas); *North Carolina* v. *Halsey Melone*, Cr. No. 28,000 (General Court of Justice, Guilford County); *Commonwealth of Massachusetts* v. *Serafim Karalexis*, Nos. 43068-69-70-71, (Suffolk County Superior Court); and *State of New Hampshire* v. *Donald Critchley*, (Derry District Court). See Appendix D, pp. 14a-23a, *infra*, for a list of those who testified and a summary of their qualifications.

[25] Brief summaries of the testimony in the federal case appear in *United States* v. *A Motion Picture Film Entitled "I Am Curious (Yellow)"*, 404 F.2d 196 (2d Cir. 1968), and at pages 189-254 of the scenario of the film introduced in evidence below as Defendant's Exhibit 9, and appended to Appellant's Reply to the Motion to Dismiss or Affirm in this Court.

[26] The testimony of the experts in the New Jersey proceeding (*Lord* v. *United Artists*, No. C-787-69, Chancery Division, Essex County), is summarized in the opinion of the Chancery Court, reprinted at pp. 1a-15a of our Reply Memorandum to the Motion to Affirm in this case.

(2) *The social importance of the film.*—Unlike *Fanny Hill*[27] and unlike "I, A Woman",[28] and unlike "peep-show" or "striptease" films[29] and unlike the various photo magazines considered in last Term of Court,[30] "I Am Curious (Yellow)" deals very substantially with subjects other than sex. The first portion of the film traces the development of Lena's political and social consciousness. It includes an extensive interview made especially for this film with Olaf Palme, now Prime Minister of Sweden, and film clips from an interview with the late Dr. Martin Luther King. These sequences, as well as two short scenes with the famous Russian poet Yevgeny Yevtushenko, are integral to the film's depiction of Lena's increasing political awareness.

Among the serious subjects addressed in the course of the motion picture are pacifism, nonviolence, class distinctions, the Swedish monarchy, the war in Vietnam, Franco Spain, and nuclear warfare. The film also traces Lena's relationship with her father, towards whom she bears substantial resentment because of personal failings. All these themes are related to the central character's personal development, and are influenced in no small part by her love affair with Borje. When her regard for Borje is at its peak, for example, Lena imagines him as Sweden's last

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[27] *Memoirs* v. *Attorney General*, 383 U.S. 413 (1966).

[28] *Cain* v. *Kentucky*, No. 347, decided March 23, 1970.

[29] *Schackman* v. *California*, 388 U.S. 454 (1969); *Ratner* v. *California*, 388 U.S. 442 (1967).

[30] *Carlos* v. *New York*, No. 524, *reversed per curiam* on December 8, 1969; *Johnson* v. *Massachusetts*, No. 458, certiorari denied December 15, 1969; *Bloss* v. *Dykema*, No. 1347, *reversed per curiam* on June 1, 1970; *Walker* v. *Ohio*, No. 1470, *reversed per curiam* on June 15, 1970; *Hoyt* v. *Minnesota*, No. 1544, *reversed per curiam* on June 29, 1970.

Crown Prince in a satirical dream scene. By contrast, when she feels most hostile towards Borje, Lena bitterly rejects Dr. Martin Luther King's doctrine of nonviolence.

The experts who testified at the trial called attention to the important social themes of the film. The Chairman of the Department of Social Relations at Johns Hopkins University, Dr. Peter H. Rossi, testified that the film has social significance "along the following line" (J.A. 411):

> At the present time throughout the world, we see young people criticizing the present form of society and searching in various ways for a new style of life, so to speak. Part of this addresses itself to criticism of the political structure that exists throughout the world, and we can see them in the film. The woman, Lena, not only criticizes the Swedish present government, but also is critical of the Chinese, the Russians and the like. It is not a very articulated criticism. This is not a film with an explicit political message. It is a film which says there is something wrong and it is a film which says also that young people like the heroine are searching for a new type of personal freedom, which will pull together in a rather honest way both the political life of the nations they live in and their personal lives, expressed partly in her criticism of her father and partly in her search for a very personal, warm, deep relationship with others. It is also a tragedy in the sense she is unable to somehow fulfill that, both because the man she picks on turns out to have deceived her, and also because she deceives herself. She worships for a moment—I put that worshipping in quotation marks— the figure of Mar-

> tin Luther King as an exponent of nonviolence. After she herself has expressed violence in the forms of aiming the shotgun at the lover, and also the fantasy in which she attempts to castrate the lover in the fantasy . . ., she has betrayed her own aspirations. It seems to me that theme of striving for a new way of life and not quite being able to make it is profoundly religious in character, in a very, very broad sense of religious, and expresses, it seems to me, the kind of struggle for a new way of life being expressed by young people throughout the world in a variety of ways.

Dr. Paulson, the Chairman of the English Department at Johns Hopkins, testified that the film deals "with an important subject, perhaps the most important subject that faces us right now . . . [the] breakdown in the relationship between the symbols of authority and the people, between parents and children" (J.A. 440). He concluded that the theme was important "even in the sense that in years to come this will have social documentary value in almost any sense of the word social" (*Ibid.*).

The majority of the court below recognized these various important themes in the film, but concluded, evidently on the basis of its own artistic judgment, that there was "no meaningful nexus" between the social and political issues presented in the film and Lena's "problem with her twenty-three lovers."[31] This conclusion conflicted with the testimony of all the defense experts, who stated their opinions that the sexual

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[31] In the course of the film Lena mentions that she has had sexual relations with 23 men, but the only love affair depicted on the screen is that with Borje.

scenes were definitely related to the political and social episodes in the motion picture.[32] The conclusion of the majority below even conflicted with that of the trial judge, who stated in his opinion that he was impressed by the testimony of Dr. Jaromir Stephany, a defense witness "who testified that, in his opinion, this is a serious film, strongly put together, confusing to some, but that it would not hold together without the sex scenes" (J.A. 8). Finally, the conclusion of the

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[32] Dr. Macksey testified that the sexual relationship signified a "relationship between classes" and that each of the sexual episodes provided "symmetry" for the nonsexual themes (J. A. 258-259). Dr. Johnson testified that Lena's sexual behavior "reveals a great deal about [her] personal attitudes and about social attitudes" and that "it is in a large part through the sexual activity that Lena begins to discover what she actually is" (J. A. 334). Dr. Mackie testified that the depiction of Lena's sexual experiences is part of "the curiosity and exploration of her ideas, her views, herself taken on an intellectual level" (J. A. 382). Dr. Rossi testified that the sexual episodes were "part of the whole web of the story which the director is trying to put across" because his message is that "one should search for honesty, not merely in public life, but also in private relationships" (J. A. 412-413). Dr. Paulson testified that the sexual scenes were needed to depict "the breaking down of old, perhaps out-moded, at any rate cliched, sexual assumptions and poses" as "part of the general break down in confidence toward society in general and certainly between the daughter and the father" (J. A. 440). Dr. Irving Brown testified that "particularly in [Lena's] search for self or search for structure, for relationship, this [the sexual theme] was an important area of her existence and that she wished to investigate this as well as others in her very broad concern or very broad search for self" (J. A. 470). And Dr. Jaromir Stephany testified that without the sexual scenes "the film would not be able to hold together . . . if these were cut out or modified in anyway, the film would be destroyed" (J. A. 535). He explained on cross-examination that "[t] he particular portrayal of each sexual scene that appears in there is part of the character development within a certain relationship, and the changes in her relationships are shown partially through the way in which she was responding sexually" (J. A. 539).

majority below contradicted the views of a majority of the United States Court of Appeals for the Second Circuit, which determined, after seeing the same film, that the sexual episodes were integrally related to the remainder of the film.[23]

In these circumstances, there cannot be any doubt that "I Am Curious (Yellow)" possesses "social importance" sufficient to place it well outside even the broadest definition of obscenity applied by members of the Court.[24] Thus, even applying the test proposed by Mr. Justice White in dissent in *Memoirs* (383 U.S.

[23] See also the critical comment at note 21 *supra*. Virtually all the reviews and articles dealing with the film, listed at Appendix B, recognized the film dealt with social issues and political ideas. As Vincent Canby said: "A full length portrait of Lena, the troubled, liberated woman, simply could not exist without these (sexual) scenes." *N.Y. Times*, March 11, 1969; (Def. Ex. 11).

[24] Whichever test is used by this Court to adjudicate the threefold criteria of dominant prurient interest appeal, patent offensiveness and social importance, the judgment is inescapable that "I Am Curious (Yellow)" is not obscene. The choice of tests has been depicted by Mr. Justice Harlan (concurring in *Ginsberg v. New York*, 390 U.S. 629, 706.) thus: "One view is that we should simply examine the proceedings below to ascertain whether the lower federal or state courts *have made a genuine effort* to apply the *Roth-Memoirs-Ginsburg* tests, and that *if such is the case*, their determinations that the questioned material is obscene should be accepted, much as would any findings of fact. Another view is that the question of whether particular material is obscene inherently entails a constitutional judgment for which the Court has ultimate responsibility, and hence that it is incumbent upon us to judge for ourselves, *de novo* as it were, the obscenity *vel non* of the challenged matter." (Emphasis added). We understand the *de novo* test to be controlling. *Jacobellis v. Ohio*, 378 U.S. 184 (1964). Even were it not, it is doubtful, we suggest, that a genuine effort to apply the tridented formula was made below, considering discontent with that formula expressed in the majority and concurring opinions, and the special weight attributed to a film, rather than a book being involved.

at 460-462), under which the "social importance" of a work "is relevant only to determining the predominant prurient intent of the material," the film at issue here cannot be classified as obscene. For the nature of its serious theme and the artistry with which it is executed establish that it is not a work with only a smattering of "social importance," but that it is, in essence, an important artistic work which cannot conceivably be characterized as "inherently and utterly without social value" (383 U.S. at 461).

These elements are among those which distinguish this film from *Un Chant D'Amour*, the 30-minute 8 mm. film, without sound, text or music, which was before this Court in *Landau* v. *Fording*, 51 Cal Rptr. 177 (1966), summarily affirmed, 388 U.S. 456 (1967). *Un Chant D'Amour* was described by the State court as a series of "erotic scenes [which] recur with increasing intensity and without direction toward any well-defined, wholesome idea, through scene after scene." The film portrayed "purely physical acts of increasing intensity without any contribution to character or plot development;" the acts were described as "male masturbation, fellatio, oral copulation, voyeurism, nudity, sadism and sodomy"—occupying in excess of half the footage of the film. On the basis of this description, the California court found the film to be "hard-core pornography."

C. The Film is Not "Hard-Core" Pornography Nor is it Commercially Exploited on the Basis of any Prurient Appeal.

1. *Pornography.*—A comparison of this film with the definition of "hard-core pornography" adopted by Mr. Justice Stewart in *Ginzburg* v. *United States*, 383 U.S. 463, 499 n.3 (1963), establishes how far re-

moved the material here is from what is traditionally viewed as "obscenity." The first sentence of the quoted definition is, "Such materials include photographs, both still and motion picture, with no pretense of artistic value, graphically depicting acts of sexual intercourse, including various acts of sodomy and sadism, and sometimes involving several participants in scenes of orgy-like character." "I Am Curious (Yellow)" plainly *has* "artistic value;" it contains no scenes of "sodomy and sadism," and none "orgy-like" in character. Unlike the materials specified in the definition quoted by Mr. Justice Stewart, this film does not "grossly depict" any sexual activities "in an exaggerated fashion," nor sexual activities "in a bizarre manner with no attempt whatsoever to afford portrayals of character or situation and with no pretense to literary value."[35]

Another definition of hard-core pornography, which was accepted by the court below in its decision in *Hewitt v. Maryland State Board of Censors*, 254 A.2d 203, 211 (1969), was that provided by Chief Judge Fuld of the New York Court of Appeals in *People* v. *Richmond County News, Inc.*, 9 N.Y. 2d 578, 587 (1961):

> It focuses predominantly upon what is sexually morbid, grossly perverse and bizarre, without any artistic or scientific purpose or justification. Recognizable 'by the insult if offers, invariably, to sex, and to the human spirit' . . . It is to be differentiated from the bawdy and the ribald. Depicting dirt for dirt's sake, the obscene is the

[35] See also the definition of "pornography" contained in *Polsky, Hustlers, Beats, and Others* (N. Y. Anchor Books, 1969) "On The Sociology of Pornography" pp. 183-201.

> vile, rather than the coarse, the blow to sense, not merely to sensibility. It smacks, at times, of fantasy and unreality, of sexual perversion and sickness and represents, . . . 'a debauchery of the sexual faculty.'

"I Am Curious (Yellow)" is not morbid, perverse or bizarre. It has ample artistic justification. It does not insult sex, nor it it vile, fantastic, unreal, or sexually sick. It is plainly, as the experts below testified (J.A. 264, 339, 377-380), totally distinguishable from pornography.

2. *Pandering—Privacy—Juveniles.*—The only exceptions which this Court has made with respect to materials otherwise non-obscene under the tridented test of *Memoirs* v. *Attorney General, supra,* have involved promotions or sales of such materials in ways which defeated the protected character of the material. Thus, in *Ginzburg* v. *United States,* 383 U.S. 463 (1966), a conviction for the sale of material which might not have been adjudged obscene in the abstract was upheld because the distributor's "sole emphasis" "was on the sexually provocative aspects of his publications," where the material "was commercially exploited for the sake of prurient appeal, to the exclusion of all other values." In *Redrup* v. *New York,* 386 U.S. 767 (1967), the Court made it plain that the legitimate area of regulation with respect to obscenity ordinarily requires evidence of pandering of the type found in *Ginzburg* v. *United States, supra* or an assault on privacy of the type occasioned in *Public Utilities Commission* v. *Pollak,* 343 U.S. 451 (1952), or a law reflecting a specific and limited State concern to protect juveniles, as in *Ginsberg* v. *New York,* 390 U.S. 629 (1968).

Obviously, a film which had not been advertised or promoted anywhere in Maryland prior to its submission to the Board of Censors, and which by contract between the exhibitor and the distributor could not be shown to anyone under eighteen years of age, could not validly be condemned as commercially exploited for the sake of prurient appeal to the exclusion of all other values. Nor could it assault anyone's privacy, or present a danger of exhibition to juveniles. Maryland's system of censorship foreclosed the film's being distributed or exhibited anywhere and to anyone in the State, but the distributor had taken necessary steps to assure that the film would be advertised and exhibited only in responsible ways and to audiences which would not defeat the film's constitutionally-protected status.

D. The Same Constitutional Test of Obscenity is Applicable to Films As To Literary Works.

Appellees have argued in their Motion to Dismiss or Affirm that the test of obscenity prescribed in this Court's past opinions—particularly the element singled out in the *Memoirs* decision—applies only to literary works, and that a different standard should be applied to films. We submit that there is no basis in the language, history or policy of the First Amendment for any such distinction, and that no decision of this Court supports such a principle.

At the outset, it is important to lay to one side the question of whether different *procedures* may be prescribed by statute for the commercial exhibition of films than for the distribution of books. The often-quoted passage in support of the distinction urged by appellees between books and films is the statement in this Court's opinion in *Freedman* v. *Maryland*, 380

U.S. 51, 60-61 (1965), that "[t]he requirement of prior submission to a censor sustained in Times Film is consistent with our recognition that films differ from other forms of expression." But that "recognition" relates only to the dissemination of the material —*i.e.*, to the question whether a certain form of prior restraint may be imposed in the form of a pre-censorship scheme in order to determine whether material is or is not subject to regulation or suppression. Several possible policy justifications, such as the differing distribution methods of films to the general public and a differing likelihood of unexpected intrusions of private sensibilities might have been thought to justify such a *procedural* distinction, and the casual dicta scattered in other opinions. On the other hand, the Court may have overlooked such facts as that books, magazines, and other printed matter, of the type characteristically involved in obscenity cases, are more accessible to adults and children than 35 mm. films of the type usually involved in these cases. Similarly, printed matter not obscene as to adults, but possibly obscene as to children, may more easily fall into the hands of children than may 35 mm. sound films and the projection and screening equipment necessary to hear and view them. In addition, as concerns obtrusions, one can as readily close one's eyes against an "obscene" or offensive image in a movie being watched in a theatre, as close one's eyes upon obscene images in a book being read in a library, at home, or on a bus.

None of this means that a Board of Censors or any other governmental body which passes upon allegations of obscenity leveled against a film may judge it by different standards than it would a book. The basic rationale for any regulation of obscenity is, after all,

the historical and policy justification outlined in this Court's *Roth* opinion. And the nub of that rationale is that the distribution of obscenity may be restrained because it is "utterly without redeeming social importance." 354 U.S. at 484. If a film "does not treat sex in a manner appealing to prurient interest"—if it contains ideas, albeit ideas which are "unorthodox . . . controversial . . . [or] hateful to the prevailing climate of opinion" (354 U.S. at 484)—it is within the range of First Amendment protection.

As recently as *Tinker* v. *Des Moines School District*, 393 U.S. 503 (1969), this Court held that the First Amendment was fully applicable to unorthodox speech-connected activity. The Court said, "[W]e do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a classroom." 393 U.S. at 513. It follows, we submit, that no watering down in the application of the First Amendment is permissible with respect to more traditional forms of expression such as motion pictures. For if the expression contained in a motion picture has a more powerful impact than that in a book—if it is, in short, a better means of communicating images, thoughts and ideas than the printed word, it is entitled all the more to constitutional protection. As the Supreme Court of Pennsylvania recently said in *Duggan* v. *Guild Theatre, Inc.* 258 A. 2d 858, 861-862 (1969), in passing on the same claim:

> The district attorney next urges that a different standard for determining obscenity should be used when dealing with motion pictures. He argues that a motion picture reproduces actual conduct through sight and sound and therefore, the impact on the

viewer is far more vivid. Presumably the district attorney is arguing that if the medium can portray what is alleged to be obscene with greater impact, the medium itself is deserving of less constitutional protection. We cannot accept this argument, for the First Amendment permits no such limitation on its protection of free expression.

This is so for at least two reasons. First, as a factual matter, we cannot say that the impact of an obscene work will always be greater when put on film. Each medium has a different type of impact, one which is difficult to qualify on any sort of obscenity scale. A nude figure seen on the screen for a short time may very well have less impact than a nude figure in a magazine, which can be leered at leisurely. . . .

Second, we find no indication in any United States Supreme Court decision that movies are to be treated differently than any other medium . . .

The decisions of this Court teach that the constitutional obscenity standard for books and films is the same. Following the decision in *Redrup* v. *New York*, 386 U.S. 767 (1967), which involved books and magazines, this Court summarily reversed, in light of *Redrup* (which set out the various obscenity tests applied by members of the Court), several cases involving motion picture films. *Ratner* v. *California*, 388 U.S. 442 (1967); *Cobert* v. *New York*, 388 U.S. 443 (1967); *Schackman* v. *California*, 388 U.S. 454 (1967); *I. M. Amusement Corp.* v. *Ohio*, 389 U.S. 573 (1968); *Robert-Arthur Management Corp.* v. *Tennessee ex rel. Canale*, 389 U.S. 578 (1968). As recently as March 23, 1970, the Court summarily reversed, citing *Redrup*, a conviction based upon a showing of the film "I, A Woman."

Cain v. *Kentucky*, No. 374. And even prior to *Redrup*, when considering the alleged obscenity of the film "The Lovers," the Court applied the same standards as had been used in cases involving books. See *Jacobellis* v. *Ohio*, 378 U.S. 184 (1964).

E. No Greater Leeway Should be Granted to Local Jurisdictions to Suppress Nationally Distributed Films or Literary Works Than is Granted to the Federal Government.

In his separate opinion in *Roth* v. *United States*, 354 U.S. 476, 496 (1957), Mr. Justice Harlan, speaking for himself alone, enunciated a constitutional rule under which different standards would be applicable to judge the permissibility of government action taken by States and local jurisdictions from that governing such action by the federal government. This view—also expressed in separate opinions in *Jacobellis* v. *Ohio*, 378 U.S. 184, 203 (1964), and *Memoirs* v. *Attorney General*, 383 U.S. 413, 455 (1966)—has recently been joined by the Chief Justice in *Carlos* v. *New York*, No. 524, O.T. 1969, decided December 8, 1969, 90 S.Ct. 395, and in *Cain* v. *Kentucky*, No. 347, O.T. 1969, decided March 23, 1970, 90 S.Ct. 1110, and tentatively by Mr. Justice Blackmun in *Hoyt* v. *Minnesota*, No. 1544, O.T. 1969, decided June 29, 1970. See also *Bloss* v. *Dykema*, No. 1347, O.T. 1969, decided June 1, 1970; *Walker* v. *Ohio*, No. 1470, O.T. 1969, decided June 15, 1970.

We submit that even assuming that such a constitutional proposition is valid in certain circumstances, it cannot be applied to this case for at least two reasons:

First, the court below did not purport to be applying any local standard to the three necessary elements for a finding of obscenity. Indeed, the concurring judge's

specific rejection of the plurality view of *Jacobellis* v. *Ohio*, 378 U.S. 184 (1964), that a "national" standard must be applied, indicates that the judges comprising the majority did, in fact, apply such a standard. Hence this is not a case in which Maryland can contend that the judicial determination made below was based upon a peculiarly local evaluation in the "domain of sexual morality." Harlan, J., in *Roth* v. *United States*, 354 U.S. at 502. Rather, the only basis for the suppression of the film is that the majority of the judges below reached a different conclusion on application of the "national" standards than did a majority of the Court of Appeals for the Second Circuit. In these circumstances, it is appropriate for this Court to evaluate the film by the standards assertedly applied below, and not to ascribe to the court below the safeguarding of standards of local morality on which it did not rely.

Second, while the absence of a uniform nation-wide standard in the area of obscenity might be permitted when the material at issue is produced and distributed locally, such a constitutional rule is a dangerous impediment to free expression whenever the expression consists of nationally distributed material. To place a national distributor of films or printed matter at the mercy of every local jurisdiction, with its different standards for what is permissible, is effectively to stifle, by "chilling," any speech which may be close to the borderline. The very same rationale relied upon to strike down a "vague" local ordinance in *Interstate Circuit, Inc.* v. *Dallas*, 390 U.S. 676, 683-684 (1968) (where Mr. Justice Harlan dissented only on the ground that the language was not impermissibly vague), is applicable here:

> The vice of vagueness is particularly pronounced where expression is sought to be sub-

jected to licensing. It may be unlikely that what Dallas does in respect to the licensing of motion pictures would have a significant effect upon film makers in Hollywood or Europe. But what Dallas may constitutionally do, so may other cities and States. Indeed, we are told that this ordinance is being used as a model for legislation in other localities. Thus, one who wishes to convey his ideas through that medium, which of course includes one who is interested not so much in expression as in making money, must consider whether what he proposes to film, and how he proposes to film it, is within the terms of classification schemes such as this. If he is unable to determine what the ordinance means, he runs the risk of being foreclosed, in practical effect, from a significant portion of the movie-going public. Rather than run that risk, he might choose nothing but the innocuous, perhaps save for the so-called "adult" picture. Moreover, a local exhibitor who cannot afford to risk losing the youthful audience when a film may be of marginal interest to adults —perhaps a "Viva Maria"—may contract to show only the totally inane. The vast wasteland that some have described in reference to another medium might be a verdant paradise in comparison. The First Amendment interests here are, therefore, broader than merely those of the film maker, distributor, and exhibitor, and certainly broader than those of youths under 16.

Surely the rights guaranteed by the First Amendment are entitled to no less protection than interstate commerce. Yet in a series of cases from *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761 (1945), through

Morgan v. *Virginia*, 328 U.S. 373 (1946), to *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), this Court has struck down local regulations which have, by imposing different requirements upon vehicles traveling in interstate commerce from those imposed by neighboring States, obstructed or hindered interstate travel and transportation. What the Court said with respect to the length of trains traveling in interstate commerce—*i.e.*, "a state may not regulate interstate commerce so as substantially to affect its flow or deprive it of needed uniformity in its regulation" (325 U.S. at 780)—cannot be less applicable to material coming within the scope of First Amendment protection. The "flow" of controversial films and books and periodicals will necessarily be hindered—if not totally suppressed—by a rule which would allow each jurisdiction to apply different standards for purposes of criminal prosecution and civil suppression. We submit that, at least where—as is shown by this record—the material is substantially distributed on a national basis, there is no room for flexibility or the application of differing standards among local jurisdictions. See also *In re Giannini*, 72 Cal. Rptr. 655, 446 P.2d 835 (1968); cf. *Edwards* v. *California*, 314 U.S. 160 (1941).

II

THE MARYLAND FILM LICENSING STATUTE IS UNCONSTITUTIONAL

We argue below that the judgment of the Maryland Court of Appeals must be reversed because of the Maryland censorship statute, on its face and as applied, exceeds permissible constitutional limits under the First Amendment. Our arguments relate (1) to the imposition of a blanket prior restraint upon the ex-

hibition of motion pictures, whether obscene or non-obscene, and regardless of the circumstances or audience, (2) to the standard prescribed in the statute—which is plainly an erroneous one; (3) to the lapse of time which is tolerated under the statutory scheme before final judicial review of the obscenity *vel non* of a particular film, (4) to the lack of procedural safeguards under the statutory scheme, and (5) to the peremptory nature of the sanction for violation of the censorship scheme.

A. The Maryland Statute Operates To Prevent the Exhibition of Films in Instances Where Such Exhibition Would Be Constitutionally Protected.

We note, preliminarily, that Maryland's obscenity-censorship law is an anachronism. It supports the only state or municipal censorship system in the United States which still attempts to regulate obscenity in films by punishing any failure to seek and win approval from a Board of Censors before any exhibition of a film to adults or to children, and under any circumstances.[26] The Maryland statute is grounded on the assumption that adults, like children, are not free under any condition or circumstances, to see a film which Maryland censors and judges consider obscene; this, regardless also of whether the film has been adjudicated non-obscene, as a matter of federal constitutional law, in other jurisdictions. Maryland thereby deprives adult residents of Maryland of the "now well established" constitutionally-protected right "to receive information and ideas . . . regardless of their social worth." (*Stanley v. Georgia*, 394 U. S. 557 (1969) and authorities there cited.) Since *Freedman v. Maryland*, 380 U. S. 51

[26] See the letter dated April 1, 1970 from The Motion Picture Association of America, *infra* at Appendix E, pp. 24a-25a.

(1965), and *Teitel Film Corp.* v. *Cusack*, 390 U. S. 139 (1968), no other State or city has acted to maintain or defend such a system. Instead, following the admonitions of this Court in cases like *Redrup* v. *New York*, 386 U. S. 767 (1967), cities and States which have enacted related legislation have concentrated on securing classifications of suitability for varying audiences, and protecting the interests of juveniles.

The intended distributor and exhibitor of this film represented to the Board of Censors and to the courts below that exhibition would be restricted to persons eighteen years of age and older (J. A. 503-504). This policy has been followed by the distributor everywhere in the United States and has been incorporated in all contracts between the distributor and exhibitors. But Maryland's censorship law neither makes nor allows for any distinction between films intended for viewing by adults, and films intended for viewing by children, or by both adults and children. Nor, for that matter, does it make or allow for any distinction between films intended for viewing by a person in the privacy of his own home. All alike must be submitted to the censors, and all alike will be banned, regardless of the age or character of the intended audience and regardless of the nature of the circumstances of the intended use—if Maryland's censors consider them obscene, *in vacuo*, for public viewing by children and adults.

This Court's decision in *Stanley* v. *Georgia*, 394 U. S. 557 (1969), accords constitutional protection to certain controlled exhibition of even concededly obscene films. The Maryland statute is overbroad because it forbids all exhibition or use of a film within the State until it is approved, including such exhibition or use as is within the range of First American protection under *Stanley*,

and such films as are within the scope of First Amendment protection under *Redrup*. We submit that a blanket prior restraint cannot, since this Court's decisions in *Redrup* and *Stanley*, be imposed upon exhibition or use of a film. The governmental authority must, rather, examine the nature of the audience and use to which the possibly obscene film is to be subjected, and may impose only such limitations as are consistent with the right recognized in the *Redrup* and *Stanley* decisions.

B. The Obscenity Standard of the Maryland Statute Is Patently Unconstitutional.

Section 6(b) of the Maryland licensing statute directs the Board of Censors to find a film "obscene"

> "... if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever other merits the film may possess."

The statutory definition is patently unconstitutional in at least three respects: (1) In substituting the "arousal of sexual desires" for the "prurient interest" standard prescribed by *Roth*, the statute sweeps in a variety of matter which would not be considered obscene under the language in *Roth*. "Sexual desires" may be deliberately aroused by films in which attractive actresses appear, but that is not the same as saying that they appeal to an "itching" or "lascivious" or "morbid" interest in sex. (2) By omitting the "contemporary community standard" prescribed by *Roth*, the statutory definition permits suppression of films which might not be obscene if judged by their effect on

the proper adult group.[27] (3) By assigning to the Board of Censors the task of determining whether the arousal of sexual desires "outweighs" the "merits" of the film, the statute violates the rule applied in the plurality opinion in *Memoirs* v. *Attorney General*, 383 U. S. 413 (1966), that "the social value . . . can neither be weighed against nor canceled by its prurient appeal or patent offensiveness."[28]

In all these respects, the language of the Maryland statute sweeps too broadly—it authorizes the Board of Censors to suppress films which are not within the constitutional definition of obscenity. The statute therefore is covered by the principle enunciated by Mr. Justice Frankfurter, concurring in *Kingsley International Pictures Corp.* v. *Regents of the University of the State of New York*, 360 U. S. 684, 694, 695 (1959):

> The legislation must not be so vague, the language so loose, as to leave to those who have to apply it too wide a discretion for sweeping within its condemnation what is permissible expression as well as what society may permissibly prohibit. Always remembering that the widest scope of freedom is to

[27] This omission is aggravated by the fact that the Board the Censors need not be representative. Indeed, the appellee board consists of three elderly ladies, whose judgments on the description or representation of sex are not those of the community.

[28] Indeed, the statutory formulation appears to violate even the standard which Mr. Justice White would apply—*i.e.*, that the "merits" or "social importance" of a film is a factor in "determining the predominant prurient interest of the material." 383 U.S. 413 at 462. Even Mr. Justice White's test does not permit a court or a board of censors to "weigh" the merits of a work *against* its sexual content and determine which is more worthy;

> be given to the adventurous and imaginative exercise of the human spirit, we have struck down legislation phrased in language intrinsically vague, unless it be responsive to the common understanding of men even though not susceptible of explicit definition. The ultimate reason for invalidating such laws is that they lend to timidity and inertia and thereby discourage the boldness of expression indispensible for a progressive society.

The overreach of the Maryland statute cannot be cured by any narrowing interpretation given its language by the Maryland Court of Appeals. It is well-established by recent decisions of this Court that where statutes which limit First Amendment freedoms are challenged as overbroad, they must be tested on their face. *Aptheker v. Secretary of State*, 378 U. S. 500, 515-517 (1964); *Zwickler v. Koota*, 389 U. S. 241, 250 (1967). Consequently, the decision of the Maryland court in *Sanza v. Maryland State Board of Censors*, 226 A.2d 317, 327 (1967), holding that Section 6 of the licensing statute "is limited to what can be deemed obscene in the constitutional sense," is not adequate to save the statute from the infirmity of overbreadth. See also *Hewitt v. Maryland State Board of Censors*, 254 A.2d 203 (1969), where the limiting *Sanza* interpretation was reaffirmed.

The vice of overbreadth is particularly dangerous in a movie licensing scheme under which prior restraints to free expression are imposed by a governmental agency. For in such a context, it is not unlikely that the administrators will conform their standards to those in the statute rather than to the construction given by the courts. That danger was apparently realized here,

for the Order of Disapproval issued by the Board of Censors states that "I Am Curious (Yellow)" was denied a license because, *inter alia*, "it lacks any identifiable artistic, cultural, thematic or other value *which might be considered redemptive*" (J. A. 2; emphasis added). The plain import of this language is that, notwithstanding this Court's *Memoirs* decision, the Board of Censors applied the statutory test and determined that the "probability" of sexual arousal "outweighed" the merits of the film.

C. The Maryland Statute Tolerates Long Delays Before Final Judicial Decision.

Subsequent to *Freedman* v. *Maryland*, 380 U. S. 51 (1965), the Maryland legislature amended Section 19 of the censorship law to add a jail sentence to the penalties provided for non-submission of a film and prescribe fixed periods of time in which the Board of Censors and a trial court must act so as to invoke the processes and sanctions of the law. In *Trans-Lux Distributing Corp.* v. *Maryland State Board of Censors*, 213 A.2d 235 (1965), the Maryland Court of Appeals held that this latter amendment fully satisfied the constitutional requirements of *Freedman*.

The State court overlooked, however, the fact that the amended statute sets no time limitation upon disposition of an appeal by the Maryland Court of Appeals. Hence the requirement of a "prompt, *final* judicial decision," prescribed in *Freedman* (380 U. S. at 59), is omitted from the Maryland procedure. The chronology of this case—in which (one month already having elapsed between the dates of initial submission of the film to the Board of Censors and the lower court determination) more than six weeks elapsed between the dates on which the case was argued in the

Maryland Court of Appeals and its disposition—demonstrates the type of delay which this omission generates and which the Court in *Freedman* correctly viewed as having a "potentially chilling effect . . . on protected expression," 380 U. S. at 61. In *Teitel Film Corp.* v. *Cusack*, 390 U. S. 139 (1968), this Court concluded that a system allowing a possible delay of 50 to 57 days prior to judicial proceedings was constitutionally defective; the same must be held as to a system which permits a comparable time period to elapse between oral argument of an appeal and a decision in the case, especially if it can operate, as here, to prevent exhibition of a film previously declared to be nonobscene by a federal circuit court of appeals.

D. The Statute Lacks Procedural Safeguards.

The Maryland statute sanctions an administrative system devoid of procedural safeguards: the proceedings are secret, no record is made of the censors' deliberations, the identity of witnesses or experts consulted by the Board on the obscenity of the film are not disclosed, and no means is provided whereby the Board's processes may be challenged. For example, there is no way of knowing whether constitutional guidelines have been adhered to, whether the available opinions of reputable and qualified experts were considered, and whether representations concerning the age or character of the intended audience were accepted. All that is known is that the censors have seen a film, deliberated with or without the advice of qualified experts and other persons, and have reached a conclusion—barren of findings of fact or law, and barren of supportive reasons. These procedures would, we submit, be inadequate to warrant decisions with regard to property rights. *A fortiori*, they are impermissible when First Amendment liberties hang in the balance.

E. The Licensing Requirement Is Absolute And Does Not Permit Even Nonobscene Films To Escape Prior Review.

The Maryland statute subjects to summary criminal punishment any person who exhibits or uses a film which has not first been submitted to and approved by the Maryland Board of Censors. This applies to obscene and non-obscene films alike, and to both public and private exhibition or use. An exhibitor or user has no option not to submit a film to censorship, not even one which has already been held non-obscene, and constitutionally protected by a final judicial decision. Nor can he show any film he believes to be non-obscene, either in a theater to the general public or only to adults, or even in the privacy of his own home to himself or others. This Court in *Kingsley Books, Inc.* v. *Brown*, 354 U. S. 436 (1957), indicated that prior restraints are valid provided that persons wishing to distribute allegedly obscene matter remain able to do so, pending a final judicial determination of obscenity and "subject only to later contempt proceedings—if the materials are obscene." 354 U. S. at 443. No such possibility exists under the Maryland film censorship statute.

III.

THE MARYLAND BOARD OF CENSORS MAY NOT CONSTITUTIONALLY PROHIBIT THE EXHIBITION OF "I AM CURIOUS (YELLOW)" BECAUSE IT HAS BEEN CONCLUSIVELY ADJUDGED NON-OBSCENE IN THE CONSTITUTIONAL SENSE IN AN ACTION BINDING ON THE UNITED STATES.

We argue herein that the First Amendment, as made applicable to States and municipalities by the Fourteenth, forbids the institution of civil or criminal proceedings against the film "I Am Curious (Yellow)" because there is outstanding, with respect to that film, a final judgment binding against the United States which holds that the film is not without redeeming social value

and that its showing, therefore, constitutes free expression protected by the First Amendment.

We emphasize, at the outset, that our argument is not simply a matter of *res judicata* or collateral estoppel. We are not arguing, in other words, that State governments are bound as parties or privies by the ruling of the United States Court of Appeals for the Second Circuit. What we are saying is: (1) that in the realm of free expression, it would be impermissibly stifling and inhibitive if State and local governments could subject the same protected activity to repeated litigation, and (2) that to give free speech the "breathing space" it requires, a judgment of a federal court, binding forever on the United States as a party, that a particular work is not obscene and is, rather, within the area protected by the Free Speech guarantee, precludes sanctions—or even the threat of sanction—by State or local government.

The relevant facts in this case are as follows:

1. The United States, acting through the United States Attorney for the Southern District of New York, instituted in 1968 an action under 19 U.S.C. 1305 to forfeit and confiscate as obscene the film "I Am Curious (Yellow)" upon its importation from Sweden.

2. The District Court denied a motion for summary judgment filed by Grove Press, Inc., as claimant. 285 F.Supp. 465. After trial before a jury, a judgment ordering forfeiture and confiscation was entered by the District Court.

3. On appeal to the United States Court of Appeals for the Second Circuit, the judgment was reversed. 404 F.2d 196. The opinion for a majority of the court

(per Hays, J.) stated that the film "cannot be classified as obscene on at least two of the three grounds. . . ." (*id.* at 199) set out in the Supreme Court's opinion in *Memoirs* v. *Attorney General*, 383 U.S. 413, 418 (1966). The majority opinion concluded that (404 F.2d at 199-200):

(a) "(I)t cannot be said that 'the dominant theme of the material taken as a whole appeals to a prurient interest in sex.' Whatever the dominant theme may be said to be . . . it is certainly not sex."

(b) "It is even more clear that 'I Am Curious' is not utterly without redeeming social value . . . it is quite certain that 'I Am Curious' does present ideas and does strive to present these ideas artistically.

In a separate opinion, the concurring judge (Friendly, J.) relied solely on the standard of "redeeming social value." He concluded that (404 F. 2d at 201):

(a) "Judge Hays' opinion sufficiently' demonstrates the existence of the required modicum of social value here," and

(b) "While this case may come somewhat close to the line, I cannot conscientiously say that a connection between the serious purpose and the sexual episodes and displays of nudity is wholly wanting."

4. The United States did not seek a writ of certiorari from this Court.

A. The Unreviewed Conclusion of the Court of Appeals That "I Am Curious (Yellow)" Is Not Utterly Without Redeeming Social Value Finally and Conclusively Binds the United States in All Actions in Which It May Hereafter Be a Party.

Strictly as a matter of estoppel by judgment or "collateral estoppel" and *res judicata*, the United States is bound finally and conclusively by the decision of the Court of Appeals for the Second Circuit. *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 402-403. (1940); *Cromwell* v. *County of Sac*, 94 U.S. 351. 1877); *United States* v. *One Obscene Book Entitled "Married Love,"* 48 F.2d 821 (S.D.N.Y. 1931). A majority of that Court has held that "I Am Curious (Yellow)", is not subject to seizure or suppression as obscene because it is not without redeeming social value. That conclusion—*i.e.*, that the film is within the protection of the First Amendment—is conclusive vis-a-vis the United States, which was an active litigant in the federal court, for all civil and criminal purposes. It would control, for example, if the United States were to seek to prosecute the mailing or transportation of the film under 18 U.S.C. 1461 or 1465.[39]

B. Multiplicity of Litigation Inhibits the Rights of Speech Protected by the First Amendment.

In recent years this Court has made repeated reference in various contexts to the importance of leaving "breathing space" for the exercise of the constitutionally protected rights of free speech. *NAACP* v.

[39] Of course, as Judge Friendly noted, factors other than the obscenity of the film might bear upon criminal or civil proceedings under *either Ginzburg* v. *United States*, 383 U.S. 463 (1966), on *Ginsberg* v. *New York*, 390 U.S. 629 (1968). See 404 F.2d at 202.

Button, 371 U.S. 415, 433 (1963). That doctrine has been applied, for example, in establishing the constitutional rule that libel actions brought by public officials against critics of their official conduct may be successfully maintained only on proof of actual malice. *New York Times Co.* v. *Sullivan,* 376 U.S. 254, 271-272 (1964). It was also relied on by the Court in holding that vaguely-phrased loyalty oaths could not withstand constitutional attack. *Baggett* v. *Bullitt,* 377 U.S. 360, 371-373, (1964). And it is the foundation for the extraordinary remedy of intervention in State-court proceedings established by the decisions in *Dombrowski* v. *Pfister,* 380 U.S. 479, 475-488 (1965), and *Zwickler* v. *Koota,* 389 U.S. 241, 249-252 (1967).

In each of the above instances, the concern expressed by the Court was not merely that the individual or group exercising First Amendment rights might be punished or prevented by judicial decree from engaging in constitutionally protected activity. In each case the Court laid down a constitutional rule which went well beyond that narrow sphere. For, as the Court explained in *NAACP* v. *Button,* 371 U.S. 415, 433 (1963), there is great harm to First Amendment freedoms whenever governmental authority is even susceptible of sweeping and improper application:

> These freedoms are delicate and vulnerable, as well as supremely precious in our society. *The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.* (Emphasis added.)

In the area involved in this case—*i.e.,* the regulation of obscenity—this doctrine was applied as early as *Smith* v. *California,* 361 U.S. 147 (1960), where the

Court held unanimously that a bookseller could not constitutionally be convicted of offering obscene books for sale without proof of scienter or *mens rea*. The Court's reasoning, quoted here, is—as we show *infra*—fully applicable to this case (361 U.S. at 153-154):

> For if the bookseller is criminally liable without knowledge of the contents, and the ordinance fulfills its purpose, he will tend to restrict the books he sells to those he has inspected; and thus the State will have imposed a restriction upon the distribution of constitutionally protected as well as obscene literature . . . And the bookseller's burden would become the public's burden, for by restricting him the public's access to reading matter would be restricted . . . The bookseller's self-censorship, compelled by the State, would be a censorship affecting the whole public, hardly less virulent for being privately administered. Through it, the distribution of all books, both obscene and not obscene, would be impeded.

Essentially the same rationale was applied by this Court in 1968, in striking down as unconstitutionally vague the Dallas, Texas, film licensing ordinance. In *Interstate Circuit, Inc.* v. *Dallas*, 390 U.S. 676, 683-684 (1968), the Court said:

> It may be unlikely that what Dallas does in respect to the licensing of motion pictures would have a significant effect upon film makers in Hollywood or Europe. But what Dallas may constitutionally do, so may other cities and States. . . . Thus, one who wishes to convey his ideas through that medium, which of course includes one who is interested not so much in expression as in making money, must consider whether what he proposes to film, and how he proposed to film it, is within the terms of classification schemes such as this. If he is unable to determine what the ordinance

> means, he runs the risk of being foreclosed, in practical effect, from a significant portion of the movie-going public. Rather than run the risk, he might choose nothing but the innocuous. . . .

The harm to First Amendment rights presented by even the threat of governmental litigation was cogently summarized by the Court in the *Dombrowski* case (380 U.S. at 486, 487):

> The assumption that defense of a criminal prosecution will generally assure ample vindication of constitutional rights is unfounded in such cases [involving First Amendment freedoms]. . . . The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure.

The practical impact of a rule that permits local jurisdictions to proceed civilly or criminally against a film which has been found to be protected by the First Amendment is graphically demonstrated by the experience of "I Am Curious (Yellow)." Notwithstanding the decision of the Second Circuit, the film has been the subject of 144 civil or criminal actions.[40] The consequence of these proceedings has been to impose extremely heavy burdens on the distribution of the film in terms of costs of litigation and unwarranted delays in exhibition.

Here, as in the *Interstate Circuit* case, a distributor would be assuming staggering financial and personal consequences to undertake such a similar project. Notwithstanding unequivocal steps to keep within the Su-

[40] A list of the actions concerning "I Am Curious (Yellow)" appears in Appendix A, pp. 1a-5a, *infra*.

preme Court's *Ginzburg* and *Ginsberg* decisions, *supra*, this film—which Judge Hays found to be a "story of a young girl who is trying to work out her relationship to such political, social, and economic problems as the possibility of a classless society, the acceptance of the Franco regime, and the policy and practice of non-violence" (404 F. 2d at 198) and was found to have social value by the testimony of 13 experts in the United States District Court—has been the subject of repeated harassment by local officials. If all future films must run this gamut, distributors will pick only the least innovative and most bland.

C. To Safeguard First Amendment Rights, States And Local Jurisdictions Should Not Be Permitted To Proceed On A Charge Of Obscenity Against Material Which Has Been Finally Determined In A Federal Court To Be Legitimate And Protected Free Expression.

We have demonstrated above that repeated and multiplicitous litigation against a book or film on a charge of obscenity carries the very same constitutional vice as overbroad enforcement powers and vague statutory standards. In all such instances, publishers and booksellers, producers and exhibitors, as well as distributors of books and films must necessarily be inhibited in their conduct.

Yet we recognize—as the courts have done time and again—that there is a legitimate and constitutionally permissible interest that governmental agencies possess in supervising and regulating commercial traffic in obscene matter. A system of censorship, as well as the authority to prosecute criminally those who deal in obscenity, has some inhibiting effect on legitimate free expression; but that effect has not been thought suf-

ficient to render a carefully limited censorship system constitutionally infirm *per se* or to prevent the application of criminal obscenity laws and ordinances. *E.g.*, *Times Film Corp.* v. *Chicago*, 365 U.S. 43 (1961); *Freedman* v. *Maryland*, 380 U.S. 51 (1965).

What must be kept always in mind, however, is that the State's legitimate interest does not extend beyond a procedure which will result in "the separation of legitimate from illegitimate speech . . ." *Speiser* v. *Randall*, 357 U.S. 513, 525 (1958). For, as this Court noted in the *Times Film* case, the warrant for a film censorship procedure is only the asserted "duty to protect . . . people against the dangers of obscenity in the public exhibition of motion pictures." 365 U.S. at 49. If it is once determined, with respect to any particular film, that it is "legitimate . . . speech" rather than obscenity, there is no longer any justification for governmental action with respect to it.

In this case, the federal government has actively and energetically litigated the obscenity *vel non* of "I Am Curious (Yellow)." A federal court has held it to be "legitimate speech," constitutionally immune from governmental regulation under the national laws respecting obscenity. That conclusion, which is now final and binding on the United States, should foreclose any local proceedings again raising the issue of obscenity.

To be sure, no State or municipality was a party to the action in the District Court or Court of Appeals. Nor could any State or municipality seek to obtain review in this Court of the Second Circuit decision. But, in the area of constitutional liberties, it is not unusual for States and local jurisdictions to be fore-

closed because of actions taken in federal court in proceedings in which they did not participate.

(1) One obvious illustration is the principle of *Rea v. United States*, 350 U.S. 214 (1956), under which decisions of federal courts regarding the constitutionality of searches and seizures by federal agents may effectively limit the use of such agents' testimony in State courts. It was not suggested in *Rea*—notwithstanding the fact that that case was decided before *Mapp v. Ohio*, 367 U.S. 643 (1961), and *Ker v. California*, 374 U.S. 23 (1963)—that the State courts should be entitled to re-examine the constitutionality of the search and seizure because the State prosecutor was not a party to the original hearing at which the mixed questions of constitutional law and fact were decided. See also *Lucas v. Mayo*, 222 F. Supp. 513 (S.D. Tex. 1963). And even in *Cleary v. Bolger*, 374 U.S. 392 (1963), where the issue concerned the prospective testimony of a *State* officer in a State proceeding, this Court's reason for refusing to permit an injunction by the federal district court was the well-established reluctance to interfere by injunction in State proceedings. Cf. *Stefanelli v. Minard*, 342 U.S. 117 (1951). (That factor is, of course, substantially weaker in the First Amendment context. See *Dombrowski v. Pfister*, *supra*.) The Court appeared to assume that the ruling of the federal court would be followed in the State proceedings—and that a remedy would ultimately be available in this Court if it were not. See 371 U.S. at 400-401.

(2) Another area where States may be foreclosed by what is done in a federal court or under federal judicial authority is illustrated by *Adams v. Maryland*, 347 U.S. 179 (1954), and *Murphy v. Waterfront Com-*

mission, 378 U.S. 52 (1964). Under these decisions, testimony obtained by federal authorities under compulsion, with an appropriate statutory provision for immunity, will foreclose State use of such testimony or its fruits—notwithstanding the absence of any consultation or representation by the State.[41] Prior to the *Murphy* decision, such a result might have been thought to follow only—as in *Adams*—where a federal statute so provided. The constitutional rule announced in Murphy, however (378 U.S. at 79), makes it plain that—as a matter of constitutional law—a federal grant of immunity is controlling on the State prosecutor.

(3) A third illustration of an area in which federal action may foreclose State and local jurisdictions notwithstanding the absence of collateral estoppel or *res judicata* is the application of the Fifth Amendment's double jeopardy provision to a State prosecution which follows on the heels of an unsuccessful (or successful) federal prosecution for what is essentially the same offense.

In *Bartkus* v. *Illinois*, 359 U.S. 121 (1959), the Court considered that situation and held that the State might permissibly proceed notwithstanding the federal acquittal because, under *Palko* v. *Connecticut*, 302 U.S. 319 (1937), the State was not constitutionally bound by the Fifth Amendment's prohibition against double jeopardy. That reasoning—which was the exclusive basis for affirming the Illinois conviction in *Bartkus*—is, of course, inapplicable today as a result of this Court's overruling of *Palko* in *Benton* v. *Maryland*, 395 U.S. 784 (1969).

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[41] The same is, of course, true under the *Murphy* case if immunity is granted by State officials and the federal government then seeks to use the evidence or its fruits.

It follows from the *Benton* decision that an unsuccessful federal prosecution will henceforth foreclose a State prosecution on essentially the same charge—notwithstanding the fact that the State did not participate and is not technically bound as a matter of *res judicata* or estoppel by judgment by the federal action. See also *Ashe v. Swenson*, 90 S. Ct. 1189 (1970); cf. *Waller v. Florida*, 90 S. Ct. 1184 (1970).

In such an instance, the State would be foreclosed because of the constitutional mandate that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." In the present case, there is an analagous constitutional rule—the broad proscription of the First Amendment against abridgment of the freedom of speech. We have demonstrated amply above that the First Amendment guarantee requires that constitutional protection be afforded against repeated and harrassing proceedings involving material which has been judicially determined to be within the range of "legitimate speech." A prohibition against local obscenity actions in these circumstances is the means for achieving this objective.

Our argument, in summary, is that whenever the national government is bound by a judicial determination that a film is not obscene, the First Amendment will not tolerate local actions relitigating the issue of obscenity. We do not reach—and need not reach—the question presented by the reverse set of facts—*i.e.*, whether a similar conclusive judicial determination in a *State* court forecloses federal action or proceedings in other States. Obviously, there are substantial legal distinctions between such a case and the one presented here. Suffice it to say that when the decision is that of a federal court, in an action binding the United States, the adjudicated breadth of conduct deemed protected is greater (*e.g.*, the material can be mailed inter-

state by private parties) and there is more likelihood of correct constitutional decisions. Moreover, a constitutional rule of this kind would encourage the supporters and detractors of a particular film or book to focus their attention and efforts on a single lawsuit—to which all interested parties might become *amici* or parties—thereby reducing unnecessary duplication and expense. A federal court is obviously a more satisfactory forum for such a proceeding.

We also note in conclusion that while our argument does not depend on the mooted issued whether there is a single national standard of obscenity (see, *e.g.*, *Jacobellis* v. *Ohio*, 378 U.S. 184, 191-196 (1964)), the acceptance of such a rule would make the adoption of our proposed constitutional principle a necessity. For if there is, indeed, a single national standard, the decision of a federal court—which binds the entire nation insofar as it affects interstate mailings and transportation—should surely prevail over the potential rulings of a local court. The application of First Amendment guarantees regarding motion pictures requires that such a "national ruling" bar subsequent re-evaluations by local judges and juries.

IV.

THE EXHIBITION OF "I AM CURIOUS (YELLOW)" IN PRIVATE MOTION PICTURE THEATERS FROM WHICH MINORS ARE EXCLUDED IS CONSTITUTIONALLY PROTECTED UNDER THIS COURT'S DECISION IN STANLEY v. GEORGIA

In *Stanley* v. *Georgia*, 394 U.S. 557 (1969), this Court recognized that the First Amendment protects possession of even concededly obscene material to the extent that any government interference would amount to "telling a man, sitting in his own house . . . what films he may watch." The opinion in *Stanley* held explicitly that the First Amendment (as contrasted with the Fourth, on which these concurring Justices re-

lied) secured to an adult "the right to receive information and ideas" (394 U.S. at 564), "the right to read or observe what he pleases" (394 U.S. at 565), "the right to satisfy his intellectual and emotional needs in the privacy of his own home" (394 U.S. at 565), and "the right to be free from state inquiry into the contents of his library" (394 U.S. at 565).

There can be no question, therefore, that under *Stanley* any adult Maryland resident has a First Amendment right to exhibit or use a print of "I Am Curious (Yellow)" in his home irrespective of any determination regarding its alleged obscenity. We submit that there is no rational basis for distinguishing between an adult's viewing of the film alone in his house and his viewing it in the company of other willing adults in a private movie theatre from which minors are excluded. Chief Judge Aldrich, speaking for the majority of a three-judge district court in *Karalexis* v. *Byrne*, 306 F. Supp. 1363, 1367 (D. Mass. 1969), *appeal pending*, No. 83, this Term, correctly concluded: "If a rich Stanley can view a film, or read a book, in his home, a poorer Stanley should be free to visit a protected theatre or library."

To be sure, the Court noted in *Stanley* that private possession in the home poses little "danger" that "it might intrude on the sensibilities or privacy of the general public," or that it "might fall into the hands of children." But a film may be exhibited at a theater in a manner that assures no intrusion on sensibilities of unwilling members of the public and no admittance of children. Indeed, the record made below and the representations made in the United States District Court in the customs case leave no room for doubt that the distributor of this film has taken full precautions to exclude minors and to advise the public of the nature of the film (without, of course, engaging in any

"pandering"). Hence suppression of the film achieves no other legitimate governmental objective than the suppression attempted in *Stanley*.

The limited nature of the legitimate governmental interests in regulating obscenity emerge from an analysis of *Stanley* in light of its antecedents, especially *Ginzburg* v. *United States*, 383 U.S. 463 (1966), and *Redrup* v. *New York*, 383 U.S. 767 (1967).

In *Ginzburg*, the Court upheld a conviction for distributing material which it "assumed" could not "be adjudged obscene in the abstract." 383 U.S. at 474. The distribution was punished because it was pandered; it was distributed in a manner that "would tend to force public confrontation with the potentially offensive aspect of the work. . . ." *Id.* at 470. The clear implication of that decision is that if the same material were presented in a non-pandering manner so as not to force public confrontation, it would have been protected. Indeed, the Court said that the *Ginzburg* conviction "does not necessarily suppress the materials in question . . ." *Id.* at 475.

In *Redrup*, the Court reaffirmed this approach to obscenity. In reversing the convictions, the Court said:

> In none of the cases was there a claim that the statute in question reflected a specific and limited state concern for juveniles. See *Prince* vs. *Commonwealth of Mass.*, 321 U.S. 158; cf. *Butler* vs. *State of Michigan*, 352 U.S. 380. In none was there any suggestion of an assault upon individual privacy by publication in a manner so obtrusive as to make it impossible for an unwilling individual to avoid exposure to it. Cf. *Beard* vs. *City of Alexandria*, 341 U.S. 622, *Public Utilities Comm'n of District of Columbia* vs. *Pollak*, 343 U.S. 451. And in none was there evidence of the sort of 'pandering' which the Court found significant in *Ginzburg* vs. *United States*, 383 U.S. 463.

The Maryland statute under which "I Am Curious (Yellow)" was banned in this case does not reflect a limited concern for juveniles. See also *Ginsberg* v. *New York* 350, U.S. 629 (1968). It does not focus on any "assault"; nor does it require "pandering".

In this case, the State of Maryland has banned all exhibition of the film "I Am Curious (Yellow)" including exhibition under conditions presenting no danger of intrusion or access to children. The decision of the Maryland Supreme Court cannot be logically reconciled with *Stanley*.

The principle articulated in *Stanley* simply cannot be limited to the home; it must be applied to all "controlled" locations which are private in the sense that no unwilling person is required to see the allegedly obscene material.

This approach is not only required by the principle underlying *Stanley;* it is also the most sensible and appropriate approach to the role of this Court in the area of obscenity. It would relieve the Court of its present obligation to read every book and view every film declared obscene by a lower court. Instead the Court could set out objective, external standards. The Court's concern would be not with what is going on *inside the theater (where the only persons exposed to* the film are willing patrons), but rather with what is going on *outside* it (where the general public is exposed to the billboard or other advertisements). Lower courts could then easily follow the guidelines set down by this Court, without the need for review in every case.

This approach to obscenity—that its regulation be similar to that effected for any "nuisance"—is one which has been favored by legal scholars for some

time. Commenting on the *Stanley* decision, one scholar recently put the principle as follows: "Obscenity is vested with constitutional protection subject to divestment upon a finding of distribution to minors or exposure to an unwilling (captive) audience." Katz, *Privacy and Pornography: Stanley v. Georgia*, 1969 Supreme Court Review, 203, 217 (1969).[42]

[42] See also Engdahl, *Requiem for Roth: Obscenity Doctrine is Changing*, 68 Mich. L. Rev. 185, 229, 232 (1969):

> ". . . [T]he state may not enact legislation which has as an objective the protection of adults from themselves."
>
> ". . . it seems impossible to justify recognition of a legitimate state interest in protecting the citizen's sensibilities with regard to sexual expression, just as such an interest cannot be justified when religious or political expression is at issue."

Morreale, *Obscenity: An Analysis and Statutory Proposal*, 2 Wisc. L. Rev. 421, 455 (1969):

> ". . . The only clearly legitimate interest a state can protect by censorship of obscene representations to adults, is the interest of persons to avoid unwilling confrontation with obtrusive, obscene representations."

Elison and Graham, *Obscenity: A Compromise Proposal*, 30 Mont. L. Rev. 123, 133, 134 (1969):

> "Any material, reprodnction, object of art or what have you should be available for purchase by the adult population *with the only* restriction being that it cannot be forced upon them."
>
> "Adults who wish to be exposed to offensive material may risk corrupting themselves. This is a minor concession to free speech and to a more practical solution to the problem of morally offensive material."

The Supreme Court, 1968, 83 Harv. L. Rev. 147, 153 (1969):

> [Obscenity may be banned] "only when it creates a nuisance to others, when it intrudes upon their own autonomous monitoring of their emotional and intellectual intake. . . . In solitude or in voluntary groups, in one's home or elsewhere, access to obscenity would be unimpaired so long as others are not brought into contact with obscenity against their will."

Recent lower-court State and federal decisions have followed a similar approach to *Stanley*. See, *e.g.*, *United States v. Thirty-Seven Photographs*, 309 F. Supp. 36 (C.D. Cal. 1970);[13] cf. *Stein v. Batchelor*, 300 F. Supp. 602 (N.D. Tex. 1969), *appeal pending*, No. 41, this Term; *California v. Lerens*, Munic. Ct., Fresno Judicial District, Calif., Nos. 40,000 and 40,415 (February 4, 1970) (alternative holding); *State v. Scott* (Dist. Ct. Texas.), 6 Cr. L. Rep. 2423.

Under the above analysis, the Maryland Board of Censors may not prevent the "controlled" exhibition of *any* film, no matter how plainly obscene it is, even if it constitutes "hard-core pornography." We submit that that is the proper and desirable constitutional role. But assuming, *arguendo*, that this Court does not agree that patently obscene material is entitled to such protection, we submit that *Stanley* means *at least* that the circumstances of dissemination of a film or book are relevant factors in judging an allegation of obscenity leveled at a work that is not "hard-core pornography." Just as sale and distribution in a salacious or "pandering" manner may tip the scales *against* borderline material, so should limited distribution, control against exhibition to minors and re-

[13] In *Thirty-Seven Photographs*, the court determined that 19 U.S.C. 1305 was unconstitutional as applied to the importer of 37 photographs for incorporation "in a book for distribution." The court held that the statute "prohibits a person who may constitutionally view pictures of [*sic*] the right to receive them." 309 F. Supp. at 38. In reasoning paralleling that of the court in *Karalexis v. Byrne*, *supra*, it said: "The First Amendment cannot be construed to permit those who have funds for foreign travel to bring back constitutionally protected literature while prohibiting its access by the less affluent." *Ibid.*

strained advertising result, under the theory of *Stanley* and *Redrup*, in a finding of nonobscenity. When a film is exhibited to adults only in a non-pandering manner so as not to intrude on the privacy of unwilling viewers, all doubts about its obscenity *vel non* must be resolved in favor of its constitutional protection. In *Ginzburg*, the Court held that the evidence relating to the manner in which the material was distributed "was relevant in determining the ultimate question of obscenity and, in the context of this record, serves to resolve all ambiguity and doubt." 383 U.S. at 470. The *Ginzburg* rule cannot be a one-way street. Where the material is—or will be—presented in a manner so as not to "force public confrontation with the potentially offensive aspects of the work" (*id.* at 490), then materials which might be regarded as obscene if pandered, should be deemed protected.

Accordingly, if the Court does not accept the argument that *Stanley* precludes *all* censorship in a controlled theater, we propose the following simple test: Any material other than "hard-core pornography" may be exhibited to adults in a theater so long as the exhibitors have sufficiently indicated to the viewing public the possible offensiveness of the film, it is not advertised in a pandering manner and the theater is policed, so that no minors are permitted to enter. We have amply demonstrated in the earlier portions of our Argument (pp. 29-32, *supra*) that "I Am Curious (Yellow)" is not hard core pornography. The decision of the court below, upholding a blanket denial of permission to exhibit the film is, therefore, erroneous and must be reversed.

V.

BY REFUSING TO DIVULGE THE NAMES OF EXPERTS CONSULTED BY THE BOARD OF CENSORS, APPELLEES DEPRIVED THE DISTRIBUTOR AND EXHIBITOR OF THE FILM OF RIGHTS SECURED BY THE DUE PROCESS CLAUSE

At the trial below appellants requested the names of experts who had been consulted by the Board of Censors during its consideration of the alleged obscenity of "I Am Curious (Yellow)." It was believed by the appellants that at least some of these experts had reached favorable conclusions regarding the film and if their names were known they might be available to testify at the trial in support of the film.

The request for disclosure was refused by the State, and the refusal was sustained by the trial court (J.A. 27, 243). This was error of constitutional dimension. The general principle applicable in criminal cases that "'suppression of evidence favorable' to the accused [is] itself sufficient to amount to a denial of due process" (*Brady* v. *Maryland*, 373 U.S. 83, 104 (1963); see also *Giles* v. *Maryland*, 386 U.S. 66 (1967)) should apply as well, when First Amendment freedoms are at stake. The State should not be permitted, in such circumstances, to keep from the party asserting a First Amendment right the name of a prospective witness who could help support the claim that free expression is at stake. In *Barbee* v. *Warden*, 331 F.2d 842 (4th Cir. 1967), the Court of Appeals for the Fourth Circuit held that reports of expert witnesses are covered by the *Brady* principle, and the same rationale applies, we submit to prospective expert testimony. Moreover, even if this Court were to limit the *Brady* principle to criminal cases, it should apply here. The consequence of the ruling of the Board of Censors is to suppress the film in Maryland—the equivalent of a seizure of the print. Hence the proceeding is "quasi-criminal

in character." *One 1968 Plymouth Sedan* v. *Pennsylvania*, 380 U.S. 693, 700 (1965). In addition, the finding of obscenity concludes the issue for future criminal prosecutions; if the exhibitor were to show the film after its rejection by the Board of Censors, he could not defend against a criminal prosecution under the Maryland statute on the ground that the film is not obscene. Consequently, the effect of the decision in this "civil" case is to foreclose the litigation of an essential element in a future criminal prosecution. The State of Maryland should not be permitted to take this step without satisfying the constitutional standards prescribed for criminal prosecutions.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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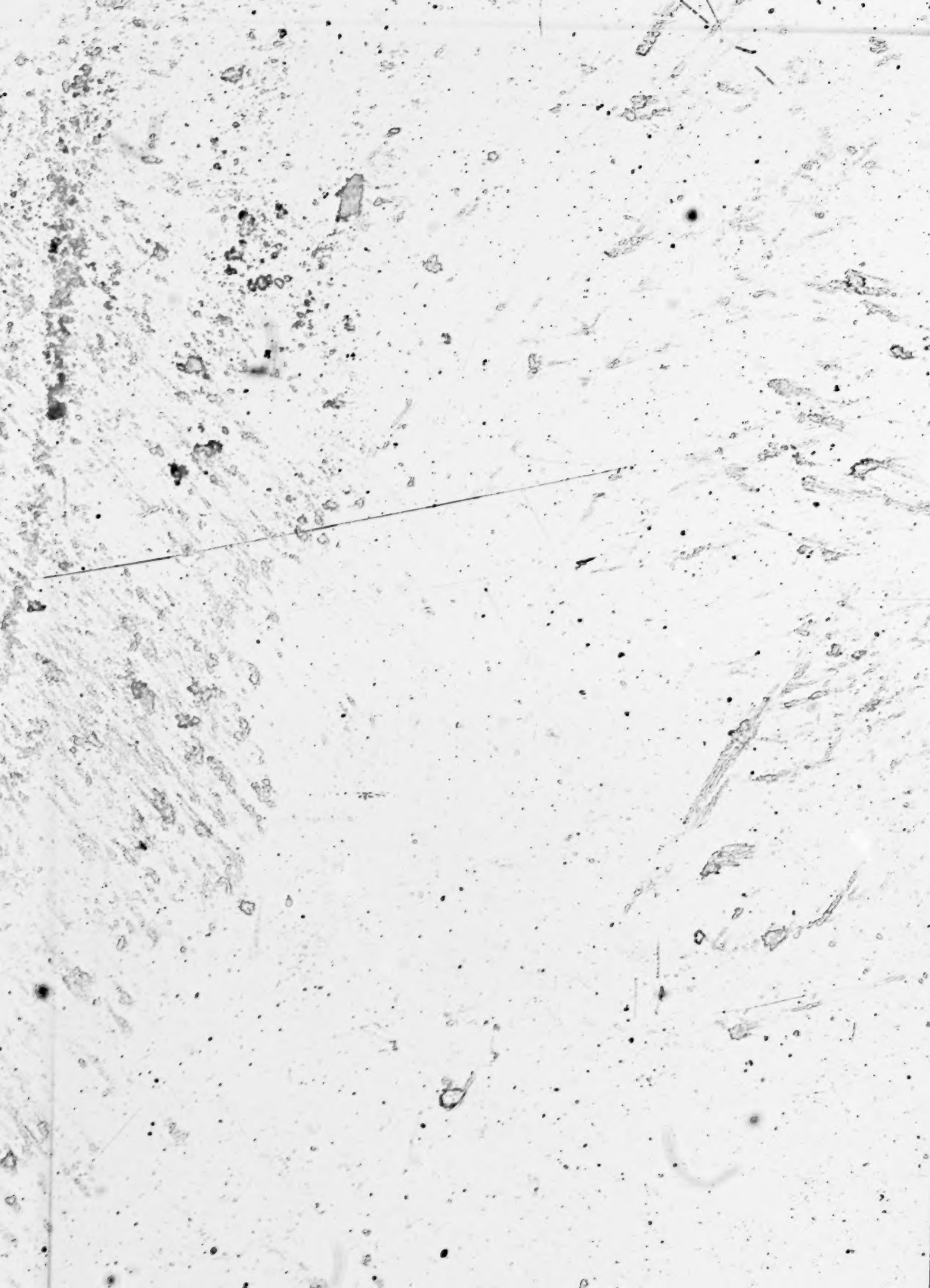

APPENDIX A

ALABAMA

(Birmingham)—*Grove Press, Inc.* v. *Melvin Bailey*, No. 69-770, (U.S. District Court for the Northern District of Alabama, Southern Division)

(Birmingham)—*Kathryn C. Cooper* v. *Melvin Bailey*, No. 24924, (Circuit Court, 10th Judicial Circuit of Alabama, Bessemer Division)

ARIZONA

(Phoenix)—*Grove Press, Inc.* v. *John Mummert Etc., Et Al*, No. Civil 69-503 Phoenix, (U.S. District Court for Arizona)

(Phoenix)—*National General Corp.* v. *Mummert*, (Superior Court in and for Maricopa County, Arizona)

CALIFORNIA

(Los Angeles)—*People of the State of California* v. *Beverly Pictures, Inc.*, No. M-102552, (Municipal Court of South Bay Judicial District County of Los Angeles, California)

(Los Angeles)—*People* v. *Harry Baffo, Et Al*, Nos. 32982, 33080, 33088, (Municipal Court of Glendale Judicial District, Los Angeles County)

(Los Angeles)—*People* v. *Robert Fishman, Et Al*, (Municipal Court of Inglewood Judicial District, Los Angeles County)

(Los Angeles)—*People* v. *John Murki*, (Municipal Court of Los Angeles Judicial District, Los Angeles County)

(Los Angeles)—*People* v. *Robert Towers*, No. 351,948, (Municipal Court of Los Angeles Judicial District, Los Angeles County)

(Los Angeles)—*Grove Press, Inc.* v. *Evelle J. Younger, Et Al*, No. 69-2554-FW (U.S. District Court Central District of California)

(Los Angeles, CDL)—*John Harmer* v. *A Motion Picture Film Entitled "I Am Curious (Yellow)"*, No. 967070, (Superior Court of State of California for the County of Los Angeles)

(Merced County)—*Grove Press, Inc.* v. *Thomas C. Lynch, Et Al*, No. F-383-Civil, (U.S. District Court Eastern Division of California)

(Merced County)—*People* v. *Ralph St. Onge*, No. 45530, (Municipal Court for Merced County Judicial District, California)

(Orange County)—*People* v. *William Alfred & Eleanor Blackburn*, No. M-53307 (Municipal Court of Orange County Harbor Judicial District, Orange County)

(San Jose)—*People* v. *Shaw International Theatres, Inc.*, No. 13024-A (Municipal Court for San Jose-Milpitas Judicial District, Santa Clara County)

(San Jose)—*Grove Press, Inc.* v. *Louis P. Bergna, Et Al*, No. 52300 (U.S. District Court Northern District of California)

COLORADO

(Denver)—*Grove Press, Inc.* v. *The State of Colorado, Et Al*, No. C-1677, (U.S. District Court for the District of Colorado)

(Denver)—*People of State of Colorado* v. *Sher Enterprises, Inc.*, No. C-12226, (District Court in and for the City and County of Denver)

GEORGIA

(Atlanta)—*Grove Press* v. *Lewis R. Slaton, Et Al*, No. 13040, (U.S. District Court, Northern District of Georgia, Atlanta Division)

KANSAS

(Kansas City)—*Kansas* v. *A Motion Picture Film Entitled "I Am Curious (Yellow)"*, No. 6122 (District Court of Johnson County, Kansas)

(Kansas City)—*Grove Press, Inc.* v. *State of Kansas, Et Al, Lake Side Drive-In Theatre, Inc.* v. *Francis D. Menghini*, No. KC-2992 & No. 2997, (U.S. District Court for the District of Kansas)

MARYLAND

(Baltimore)—*Howard Wagonheim, Et Al* v. *Maryland State Board of Censors*, No. 212 (Court of Appeals of Maryland)

MASSACHUSETTS

(Boston)—*Commonwealth of Massachusetts* v. *Serafim Karalexis, Et Al*, Nos. 43068-69-70-71, (Superior Court of Suffolk)

(Boston)—*Serafim Karalexis, Et Al* v. *Garret H. Byrne*, No. 69-665-J, (U.S. District Court for the District of Massachusetts)

MICHIGAN

(Ann Arbor)—*William F. Delhey* v. *Fifth Forum & Grove*, No. 4711 Circuit Court, C.C.A. No. 9069, (Circuit Court Washtenaw County)

(Detroit)—*Grove Press, Inc.* v. *Robert B. Blackwell*, No. 33369, (U.S. District Court Eastern District of Michigan, Southern Division)

MISSOURI

(Kansas City)—*Grove Press, Inc.* v. *Herbert Hoffman & Honorable John H. Lucas*, No. 17787-4 Civil Action (U.S. District Court for Western District of Missouri Western Division)

(Kansas City)—*Herbert Hoffman* v. *Dickinson Operating Co., Inc., Et Al*, No. 730,169 (Circuit Court of Jackson County, Missouri)

NEW HAMPSHIRE

(Derry)—*Cinema Enterprises of New Hampshire, Et Al* v. *State of New Hampshire*, Civil 3109 (Derry District Court)

(Derry)—*State of New Hampshire* v. *Donald Critchley, Et Al*, (Rockingham County Superior Court)

(Derry)—*Cinema Enterprises of New Hampshire, Inc., & Donald Critchley* v. *Warren B. Redman, Attorney General of New Hampshire, Et Al*, Civil 3096 (U.S. District Court for District of New Hampshire)

NEW JERSEY

(Livingston)—*Joseph P. Lordi, Prosecutor* v. *United Artists Corp., Et Al*, No. C-787-69 (Superior Court Chancery Division, Essex County)

(Linden)—*Leo Kaplowitz, Prosecutor* v. *Wood Plaza Theatres, Corp., Et Al*, No. C-829-69 (Superior Court Chancery Division, Union County)

(Woodbridge)—*Edward J. Dolan, Prosecutor* v. *United Artists Corp., Et Al*, No. C-813-69 (Superior Court Chancery Division, Middlesex County)

NEW MEXICO

(Albuquerque)—*Grove Press, Inc., Et Al* v. *City of Albuquerque, Et Al*, No. 8177 (U.S. District Court for the District of New Mexico)

(Albuquerque)—*City of Albuquerque* v. *Tom Singleton*, No. P412-9H7675 (Municipal Court City of Albuquerque)

NORTH CAROLINA

(Greensboro)—*State of North Carolina* v. *Halsey Melonie*, No. CR28,000 (General Court of Justice District Court Division Guilford County)

OHIO

(Cleveland)—*Grove Press, Inc., Et Al* v. *John T. Corrigan, Et Al*, No. 877845 (Civil Branch, Cuyahoga County Court of Common Pleas)

(Cleveland)—*State of Ohio* v. *Dave Browdie*, No. 93748 (Criminal Branch, Cuyahoga County Court of Common Pleas)

(Youngstown)—*State of Ohio* v. *Cecil Cook*, (Criminal Branch Mahoning County, Court of Common Pleas)

(Youngstown)—*Grove Press, Inc., Et Al* v. *Anthony B. Flask, Et Al*, No. C69-735 (U.S. District Court for the Northern District of Ohio, Eastern Division)

(Youngstown)—*State of Ohio* v. *Charles Hamm*, (Criminal Branch Mahoning County, Court of Common Pleas)

(Youngstown)—*State of Ohio, Ex Rel Vincent E. Gilmartin, Et Al* v. *State-Youngstown Theatre Corp.*, (Civil Branch Mahoning County Court of Common Pleas)

PENNSYLVANIA

(Edwardsville)—*Commonwealth of Pennsylvania* v. *Grove Press, Inc.*, No. 18 (Court of Common Pleas of Luzerne County, Civil Equity)

(Philadelphia)—*Grove Press, Inc.* v. *City of Philadelphia*, No. 69-972 *City of Philadelphia* v. *19th & Chestnut Street Corp., Et Al*, No. 69-934 (U.S. District Court for the Eastern District of Pennsylvania)

VIRGINIA

(Norfolk and Virginia Beach)—*Grove Press, Inc., Et Al* v. *Andre Evans, Et Al*, No. 355-69-N (U.S. District Court for the Eastern District of Virginia, Norfolk Division)

Commonwealth of Virginia v. *Kenneth Andrews*, (Municipal Court of City of Virginia Beach)

WASHINGTON

(Spokane)—*State of Washington* v. *National General Theatres, Inc.*, No. 194766 (Superior Court of the State of Washington in and for the County of Spokane)

(Spokane)—*State of Washington* v. *National General Theatres, Inc.*, No. 9377 (Superior Court of the State of Washington in and for the County of Spokane)

(Spokane)—*Grove Press, Inc.* v. *Donald C. Brockett, Et Al*, No. 3300 (U.S. District Court Eastern District of Washington, Northern Division)

APPENDIX B

NEWSPAPERS

Akron Beacon Journal, Arnold, Gary, "Beware: Buildup to Letdown", May 14, 1969

Baltimore Evening Sun, Cedrone, L., "Review", July 21, 1969

Baltimore News American, Childress, Anne, "Gable's Famous 'Damn' Cued Profane Trend", April 1, 1969

Boston Herald Traveler, Maloney, A., "Review", May 28, 1969

Chelsea Clinton News, Glatzer, Robert, "I am Curious-Metaphors of Sweden", March 27, 1969

Columbus Citizen Journal, Gerrard, G., "Review", July 4, 1969

Des Moines Register, Aarons, Leroy F., "'I am Curious' Not Very Sexy, Voyeurs Warned", March 20, 1969

Detroit Free Press, Stark, S., "Review", June 22, 1969

Detroit News, Greene, Doc, "Glut of Smut", April 30, 1969

East Oregonian, Mahar, T., "Review", June 12, 1969

Fort Worth Morning Star Telegram, Champlin, Charles, "Nothing Movie Can't Show; 'I Am Curious' Proves It", June 21, 1969

Garden City, New Jersey Newsday, Kilpatrick, James L., "Where Do We Go From Here?", March 26, 1969

Hartford Times, Drew, Bernard L., "I Am Curious (Yellow)"—Graphic Not Porno", March 18, 1969

Hollywood Sun-Tattler, Primak, L., "Review", June 7, 1969

Kansas City Times, Fowler, G. M., "Review", June 21, 1969

Long Island Newsday, Gelmis, J., "Review", March 31, 1969

Los Angeles Herald Examiner, Blevins, Winifred, "'Curious' Immature Fun", May 23, 1969

Lowell Massachusetts Sun, Sarmento, William, "Boston Police Confiscate Swedish Film", May 12, 1969

Miami Beach Sun, Dana, G., "Are You Curious Or Yellow", June 1, 1969

Miami Herald, "Curiouser and Curiouser", May 31, 1969

Miami News, Kelly, H., "Review", June 3, 1969

Morning Telegraph, Mishkin, Leo, "Everyone's Curious (Yellow)", March 31, 1969

New York Leader, Simon, John, "Progress and Regression", March 31, 1969

New York News, Carrol, Kathleen, "'Curious' Is An Exercise in Tedium", March 11, 1969

New York Post, Winsten, A., "Review", March 11, 1969

New York Times, Simon, John, "Getting Furious Over 'Curious'", February 9, 1969

New York Times, Canby, Vincent, March 11, 1969

New York Times, Reed, R., "I Am Curious (No)", Sunday, March 23, 1969

New York Times, Weinraub, B., "Obscenity or Art", July 27, 1969

Norfolk Virginian Pilot, "A High-Priced Dive Into Shallow Water", May 28, 1969

N.Y.U. Heights Daily News, Young, Andrew, "Curious But Yellow", April 30, 1969

Oakland Tribune, Nachman, G., "Review", May 27, 1968

Patterson Morning News, Schaad, Jacob, "Six Barrier Falls In 'I Am Curious'", March 11, 1969

Philadelphia News, Oppenheimer, Judy, "So You're Curious", April 24, 1969

Portland Oregonian, Champlin, Charles, June 28, 1969

Providence Journal, Arnold, G., "Review", June 1, 1969

Quincy Manchester Patriot Ledger, Arnold, William, "It's Curiouser and Curiouser", April 2, 1969

Quincy Massachusetts Patroit Ledger, Liss, R. E., "Refreshingly Curiouser", May 10, 1969

Seattle Post Intelligencer, Stromberg, Ralph, "'Curious' Lacks Artistic Form", May 28, 1969

Seattle Times, Hartl, John, "Curious (Yellow)", May 27, 1969

St. Louis Post Dispatch, Wead, G., "Humor of the Erotic Seriousness", June 1, 1969

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Washington Army Times, Greenwald, John, "Funny Bits Save Dum Dum Plots", May 21, 1969

Washington News, Berliner, Milton, "I Am Curious (Yellow)", April 1, 1969

Washington News, "Curiously Colorless", April 8, 1969

Washington Post, Aarons, L. R., "Answering 'Curious' Questions", March 11, 1969

Washington Star, MacArthur, "And You Could Be Furious (Livid)", April 1, 1969

Wichita-Kansas Beacon, Canby, Vincent, "Films Like 'I Am Curious'", March 2, 1969

PERIODICALS

Boston Christian Science Monitor, "The 'Curious' Case", April 16, 1969

Boxoffice, "I Am Curious (Yellow)", March 10, 1969

Cavalier, Abel, B., "Review", June, 1969

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Cosmopolitan, Smith, L., "Cosmo Goes to the Movies", May 1969

Cue, Wolf, W., "Review", March 15, 1969

Distant Drummer, Eisenberg, L., "Review", May 2, 1969

Door To Liberation, Mahan, M., "Review", July 31, 1969

Film Bulletin, Zunser, J., "Review", March, 1969

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Film Quarterly, Smith, C. B., "I Am Curious-Yellow and Blue", Vol. 22, No. 4 (1969)

Film World, Steele, R., "Esthetique du Mal" Spring, 1970

Friends Journal, Steele, R., "I Am Curious-Yellow", Vol. 15, No. 16 (1969)

Guardian, Silber, Irwin, "Quack, Quack, Quack All the Way", March 22, 1969

Harpers Bazaar, Trotta, G., "Review", June, 1969

Holiday, Matheson, R., "Review", December, 1968

Independent Film Journal, "I am Curious (Yellow)", March 18, 1969

Life, Schickel, R., "It Hides Nothing But the Heart"

Motion Picture Daily, Gertner, Richard, "I Am Curious (Yellow)", March 10, 1969

The Nation, Hatch, R., "Review", March 24, 1969

National Review, Corliss, R., "Film and Other Four Letter Words", July 29, 1969

The New Republic, Kauffman, S., "Review", March 15, 1969

Newsweek, Morgenstein, J., "Review", March 24, 1969, p. 114

New Yorker, Gilliat, Penelope, "Letter From the Flicks: Manhattan", April 5, 1969

Nightsounds, Becki, R., "Review", May, 1969

N.Y.U. Ticker, Leff, N., "Review", March 19, 1969

Pageant, McQuade, K., "Review", June, 1969

Pepper Pot, "Mood Yellow", June, 1969

Playboy, Williamson, Bruce, "I Am Curious (Yellow)", May 1969

Saturday Review, Alpert, Hollis, "On Being Curious-Twice", March 15, 1969

The Squire, "Review", June 19, 1969

Tempo, Cox, H., "Review", Vol. 1 No. 17 (1969)

Time, "Dubious Yellow", March 14, 1969

TV Radio Mirror, "Review", July, 1969

The Villager, Mayerson, Donald, "I Am Curious (Yellow)", March 13, 1969

Vogue, West, Anthony, "I Am Curious (Yellow)", April 15, 1969

FOREIGN REVIEWS

Afronbladet, Stockholm, "I Am Curious (Yellow)", October 10, 1967

Berlingske Tidende, Copenhagen, "I Am Curious (Yellow)", December 12, 1967

Chatelaine, Toronto, Ontario, Canada, "I Am Curious (Yellow)", July 1969

Expressen, Stockholm, "I Am Curious (Yellow)"

Fib-Aktuellt, Stockholm, "I Am Curious (Yellow)", No. 43, 1967

Helsingborgs Dagbladet, Halsingbord, "I Am Curious (Yellow)", October 17, 1967

Idrottsbladet, Stockholm, "I Am Curious (Yellow)", October 11, 1967

Les Courier des Etats-Unis, "Je Suis Curieuse", March 20, 1969

London Financial Times, "Douceure de Vivre", March 7, 1969

Politiken, Copenhagen, "I Am Curious (Yellow)", December 12, 1967

Sydsvenska Dagbladet, Malmo, "I Am Curious (Yellow)", October 17, 1967

Vancouver Columbian, "Hair and I Am Curious", April 14, 1969

Vi, Stockholm, "I Am Curious (Yellow)", No. 43, 1967

APPENDIX C

A Listing of Cities by State in Which "I Am Curious (Yellow)" Has Played or Is Currently Playing:

[number of weeks indicated in parens]

ALASKA
Anchorage (2)

ALABAMA
Birmingham (1)

ARIZONA
Phoenix (11)

CALIFORNIA
San Francisco (37)
Los Angeles (34)
San Diego (23)
Oakland (10)
San Mateo (10)
San Jose (24)
Monterrey (9)
Menlo Park (15)
Larkspur (8)
Davis (2)
San Bernardino (7)
Concord (6)
Sacramento (21)
Berkeley (19)
Riverside (15)
Balboa Beach (1)
Inglewood (2)
Glendale (8)
Hermosa Beach (8)
Long Beach (9)
North Hollywood (6)
Pasadena (5)
Stanton (1)
Tarzana (6)
Van Nuys (9)
Merced (5)
Petaluma (6)
Fresno (4)*

COLORADO
Denver (18)
Colorado Springs (6)
Pueblo (2)

CONNECTICUT
New Haven (13)
Hartford (14)
Norwich (3)
New London (5)
Bridgeport (6)
Stamford (6)
Waterbury (3)
Deep River (2)
Guilford (2)
Middletown (3)
Seymour (3)
Torrington (3)

FLORIDA
Miami Beach (18)
St. Petersburg (38)*
Palm Beach (9)
South Miami (19)*
Clearwater (17)*
Jacksonville (9)

GUAM
Agana (1)

HAWAII
Honolulu (10)

ILLINOIS
Chicago (27)*
Moline (4)*
Champaign (7)

* Denotes engagements still running as of 31 March 1970

INDIANA
Columbus (3)
Kokomo (4)

IOWA
Council Bluffs (5)

KANSAS
Overland Park (1)

MAINE
Waterville (4)
Portland (5)
Bangor (6)

MASSACHUSETTS
Boston (24)
Fall River (1)
Worcester (1)

MICHIGAN
Highland Park (29)*

MINNESOTA
Minneapolis (26)*

MISSOURI
Kansas City (5)

NEVADA
Las Vegas (7)
Reno (8)

NEW HAMPSHIRE
Somersworth (3)
Derry (4)*

NEW JERSEY
Trenton (5)
Newark (6)
Englewood (6)
Irvington (8)
Keyport (4)
Atlantic City (28)
Oaklyn (7)
Lakewood (11)
Hackensack (5)
Livingston (5)
Wayne (1)
Woodbridge (4)
Linden (6)
Bloomfield (3)
Jersey City (6)
Plainfield (3)
Atlantic Highlands (2)
Bogota (3)
Iselin (1)
Hightstown (2)
Blackwood (3)

NEW MEXICO
Albuquerque (12)

NEW YORK
Manhattan (47)
Brooklyn (11)
Bronx (11)
Queens (11)
Staten Island (12)
Long Island (11)
Dobbs Ferry (4)
White Plains (5)
Yonkers (5)
Peekskill (6)
Suffern (5)
Ossining (5)
Monticello (2)
White Lake (1)
Utica (9)
Woodbourne (4)
New Paltz (10)
Troy (6)
Buffalo (16)*
Cobleskill (1)
Rochester (14)
Syracuse (9)
Amsterdam (4)
Newburgh (2)
Glens Falls (3)

* Denotes engagements still running as of 31 March 1970

South Fallsburg (1)
Walden (1)
Binghamton (5)
Chester (2)
Catskill (3)
Poughkeepsie (3)
Harrison (2)
Warwick (2)
Nanuet (2)
Dover Plains (2)

NORTH CAROLINA
Durham (10)*
Greensboro (7)*
Asheville (1)*

OHIO
Columbus (21)
Cleveland (8)

OKLAHOMA
Oklahoma City (21)

OREGON
Portland (36)
Eugene (7)

PENNSYLVANIA
Philadelphia (21)
Hazelton (2)
Wilkes Barre (3)
Columbia (7)
Windber (4)
York (7)
Harrisburg (7)
Reading (7)
New Kensington (17)*
Scranton (3)

PUERTO RICO
Santurce (9)

RHODE ISLAND
Narragansett (3)
Providence (27)*

TEXAS
Lubbock (6)
Dallas (8)*
Houston (5)
San Antonio (3)
Austin (2)

VERMONT
Northfield (2)
St. Albans (2)
Burlington (4)
Rutland (2)
Bennington (2)

VIRGINIA
Norfolk (3)
Virginia Beach (10)

Washington, D. C. (52)*

WASHINGTON
Seattle (43)*
Tacoma (17)
Spokane (3)

WEST VIRGINIA
Logan (1)
Martinsburg (2)*

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* Denotes engagements still running as of 31 March 1970

APPENDIX D

EXPERTS WHO TESTIFIED IN SUPPORT OF "I AM CURIOUS (YELLOW)" AND THEIR CREDENTIALS

U. S. v. A Motion Picture Entitled "I Am Curious-Yellow", 196 F.2d 404, (U.S. Court of Appeals for Second Circuit)

STANLEY KAUFFMANN

—graduate of N.Y.U. College of Fine Arts with degree in Fine Arts
—honorary fellow of Moss College of Yale University
—visiting professor of drama at Yale School of Drama
—taught courses in theatre and film
—has been film critic for New Republic for 8 of last 10 years
—written film criticism for other magazines
—drama critic for *Times*
—views 125-175 films per year
—conducted T.V. shows
—chairman of National Society of Film Critics

PAUL ZIMMERMAN

—B.A. Amherst
—M.A. in English Literature from University of California at Berkeley
—M.A. journalism from Columbia
—film reviewer for Newsweek
—views 150 films per year

JOHN L. SIMON

—A.B., A.M., and PhD. from Harvard
—taught comparative Literature, English, Humanities at Harvard, M.I.T. and others
—film critic of New Leader
—drama critic for Hudson Review
—drama critic for Commonweal
—film critic for Horizon, Film Heritage
—contributor to Times, Vogue, Nation Time, etc.

—lectured on films
—written books on film
—written books on the arts
—working on book on films with Schickel

HOLLIS ALPERT

film critic for Saturday Review for 18 years
—fiction editor for New Yorker
author of book on essays on films *Dreams and Dreamers*
working on series of articles to be made a book on sex and the films
—written four novels
has lectured at several colleges
appears on panels, T.V. talk shows
—views 150-200 films per year

DR. HOWARD MOODY

—Senior Minister of the Judson Memorial Church in N.Y.C.
—seminary training at Yale Divinity School
—honorary doctorate from Kalamazoo College
—written for *Christian Century* and lay magazines
—wrote book *The Fourth Man* social criticism of contemporary American Culture
—on Borough President's Planning Board for Greenwich Village Church
—his church has drama theatre, dance theatre and art gallery

CHARLES WINNICK

—professor of Sociology at C.C.N.Y.
—licensed psychologist in New York
—M.A. and PhD. from N.Y.U.
—fellow of several professional societies
—consultant to U.S. Senate subcommittee on Juvenile Delinquency
—preparing paper for Sen. Javits Commission on Mental Health of Children

JAMES BEVERIDGE

—professor of films at Institute of Film and T.V., N.Y.U.
—film producer of educational and documentary films
—producer and executive producer with National Film Board of Canada
—director of North Carolina film board
—produced 150 documentaries
—consultant with UNESCO

TOM LEVIN

—assistant professor of psychiatry at Edison College of Medicine
—assistant professor of community health
—private practice in psychotherapy
—on faculty of National Psychological Association for Psychoanalysis
—member of several professional societies
—B.A., M.A., PhD.
—written articles on psychoanalysis

NED POLSKY

—associate professor of sociology at State University of N.Y.
—formerly associate editor of journal called *Social Problems*
—written book on pornography

NORMAN MAILER

—published ten books
—directed and acted in two motion picture films

SUSAN FIELDS

—instructor of English Literature at Catholic University
—cultural criticism for *Washington Free Press*

Joseph P. Lordi v. *Grove Press, Inc., et al*, No. C 787-69,
(Superior Court of New Jersey)

DR. DAVID ERNEST SCANLON

—assistant professor of drama and speech at Rutgers
—student of Swedish Drama

GERALD GARGIULO

—assistant professor of religious studies at Manhattan College
—practicing psychoanalyst in New York

PROFESSOR SOL WORTH

—associated with Annenberg School of Communications
—lecturer on films
—has produced films

DR. HENRY A. DAVIDSON

—psychiatrist
—former superintendent of psychiatric hospital

Grove Press, Inc. v. *Melvin Bailey, etc.*, Civ. Action 69-770,
(U.S. District Court for Northern Dist. Alabama)

DR. JAMES PAUL FRANKE

—PhD. in philosophy
—teaches philosophy at Birmingham Southern College
—member of Southern Society of Philosophy

DR. JOHN J. POOLE

—associate professor of English at Birmingham Southern
—PhD. of University of Alabama in English

DR. EMMETT PARKER (By Affidavit Only)

—PhD. in French Literature
—M.A. in French
associate professor at University of Alabama
—formerly taught at Wisconsin and Temple

ROY DRAYDON WELLS, JR. (By Affidavit Only)

—assistant professor of religion at Birmingham Southern College.

DR. SHERMAN C. RAFFEL (By Affidavit Only)

—consulting psychologist associated with University of Alabama Hospital

HARWELL G. DAVIS, JR.

—practising pathologist
—MD. degree from North Western
—assistant professor at North Western University Medical School

DR. CLARENCE ROSENCRANS.

—clinical psychologist at University of Alabama
—PhD. in psychology

Grove Press, Inc., Howard Wagonheim, 5 West Amusement Co., Inc. v. Maryland State Board of Censors, 252 A2d 240, (Md. Court of Appeals)

JAMES B. MACKIE

—associate professor of Medical Psychology University of Maryland Medical School
—B.A. in Fine Arts
—M.A. in Anthropology
—taught courses in sexual behavior
—taught courses in projective techniques

PETER H. ROSSI

—sociologist, chairman of Department of Social Relations at John Hopkins
—former professor of Sociology and director of National Opinion Research Center at University of Chicago
—PhD.
—former editor of American Journal of Sociologists
—associate editor of American Sociology
—consultant in sociology for the Kerner Commission
—author of books and articles in field of sociology

RONALD PAULSON

—professor of English at John Hopkins
—chairman of English Department
—PhD. from Yale
—Guggenheim fellow
—average of two films per week
—author of essays and books on English and Graphics

DR. IRVING BROWN

—professor and director of Fine Arts program at University of Maryland
—PhD. in theatre arts and fine arts
—specialists for U.S. Department of Education in Theatre, Dance and Speech
—lectured many times

DR. ANKE A. EHRHARDT

—instructor in Medical Psychology
—working on Psychohormonal Research Unit in Department of Psychiatry and Behavior Sciences at John Hopkins
—PhD. in psychology
—taught courses in projective techniques
—lectured on sexual behavior and development
—co-authored work on psychology of sex

JAROMIR STEPHANY

—chairman of Department of Photography and Films at Maryland Institute
—organizer of Maryland Film Festival
—curatorial assistant at George Eastman House-one of three film archives in U.S.
—B.A. in Photography
—M.A. in Fine Arts

State of New Hampshire v. *Donald Critchley*, (Derry District Court)

KEVIN KELLY

—drama critic of Boston Globe for eleven years
—lectured at colleges
—M.A. in Fine Arts from Boston University

Grove Press, Inc., et al v. *Anthony B. Flask, et al*, No. C69-735, (U.S. District Court, Northern District Ohio)

DR. CHARLES DELEON

—psychiatrist

WILLIAM IRWIN

—former chairman political science Western Reserve University
—professor of political science

EDWARD HENNING

—curator of Modern Art and Films at Cleveland Art Museum

ARTHUR KNIGHT

—articles on sex and cinema
—professor of Cinematography at Southern California

Kansas v. *A Motion Picture Entitled "I Am Curious-Yellow"*, No. 6122, (District Court of Johnson County Kansas)

WILLIAM A. O'CONNOR

—practicing clinical psychologist
—chief psychologist and director of Research at Kansas State Mental Hospital
—lecturer at University of Kansas Medical Center

CAROL LUHN

—practicing psychologist
—consultant at Kansas State Medical Hospital
—staff psychologist at Western Missouri Mental Health Center

DR. BYRON FREDERICK EICHER

—consultant in group psychotherapy at Kansas State Mental Hospital
—clinical psychologist
—director of psychodrama at Mareno Academy in New York

PROFESSOR OSCAR R. EGGERS

—associate professor of sociology
—director of Family Study Center at University of Missouri at Kansas City

DR. JAMES K. LOUTZENHISER

—psychiatrist
—assistant professor of psychiatry at Kansas University Medical Center
—instructs in Family and Films course at University of Missouri at Kansas City
—published reviews of films and books on film
—engaged in private practice of psychiatry

DR. STANTON L. ROSENBERG

—engaged in private practice of psychiatry

State of North Carolina v. Halsey Melone, Cr No. 28,000 (General Court of Justice, Guilford County)

DR. HERMAN MIDDLETON (N.C.)

chairman of Department of Drama and Speech, University of North Carolina at Greensboro

MRS. DOROTHEA WRIGHT (N.C.)

candidate for PhD. in English

Commonwealth of Massachusetts v. Karaleris, et al. Nos. 43068 69 70 71. (Suffolk County Superior Court)

KENNETH S. KISTER

assistant Library Science professor at Simmons College

EDGAR DRISCOLL

—film critic for Boston Globe

RICHARD CARTWRIGHT

—chairman of Department of Humanities at M.I.T.

JANE HANNIGAN

—professor at Simmons College

PROFESSOR JAMES HENDRICKSON

—professor of Chemistry at Brandeis University

NICHOLAS NYARY

—director of World Affairs Council in Boston

PROFESSOR ROBERT STEELE

—professor of Cinematography at Boston University

PROFESSOR DAVID WHITE

chairman of Department of Journalism at Boston University

PROFESSOR SAMUEL WALLACE

professor of Sociology at Brandeis University

PROFESSOR MARK LEVINSKY

professor of Philosophy at M.I.T.

PROFESSOR SYLVAN BROUMBERGER

professor of Philosophy at M.I.T.

APPENDIX E

MOTION PICTURE ASSOCIATION OF AMERICA, INC.
522 FIFTH AVENUE
NEW YORK, N.Y. 10036

April 1, 1970

Edward de Grazia, Esq.
1320 19th Street, N.W.
Washington, D.C.

Dear Mr. Grazia:

You have requested information with respect to the number of motion picture censor boards now operative in the United States.

The State of Maryland is the only state which maintains a censor board which examines all motion pictures prior to their release for the purpose of censorship and licensing.

The State of Rhode Island maintains a motion picture review board empowered to classify motion pictures. The Rhode Island Board does not review all motion pictures. Exhibitors are required to submit suggested classifications, "suitable" or "not suitable", for motion pictures to be exhibited in Rhode Island. If the Board questions a suggested classification, it may request a screening of the picture for purposes of classification only. To my knowledge, during the year and a half in which the Rhode Island Board has been operative, it has screened less than 25 motion pictures.

There are two cities which have operative motion picture review boards. The City of Dallas has a classification board which operates in the same fashion as the Rhode Island Board, i.e., not all pictures are reviewed, only those requested for screening after self-classification by the exhibitor.

The City of Chicago reviews those motion pictures which are to be shown to persons under 13 and licenses

them for such exhibition. Motion pictures which will be limited in their exhibition to adults are not licensed.

Several communities such as Milwaukee, Wisconsin and Detroit, Michigan have quasi official boards. The Milwaukee Motion Picture Commission has no legal authority to censor motion pictures, but does review motion pictures for purposes of censorship. No license is issued by the Commission and its only authority is to request exhibitors to abide by its decisions. In Detroit, Michigan, the Chief of Police reviews motion pictures. However, again, the authority to do so is subject to challenge.

To my knowledge, these are the only operative motion picture censor boards or groups at the present time. There may be instances of unofficial censorship by various government authorities in isolated municipalities, but the above boards represent the only official boards of which we have knowledge.

Sincerely yours,

Barbara Scott

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